

JUDICIAL DEPARTMENT OF THE STATE OF

dignity as to priority, and prior to July 1st, each season the Cub River Middle Ditch Company shall use 4/9ths of the water herein decreed to both Companies and the said Cub River and Worm Creek Canal Company shall use 5/9ths of the same; and after said first day of July, of each year, said water herein allotted to said Companies shall be used jointly by them, share and share alike.

13-0027 EIGHTH: That the defendant, Preston City, is the owner of the right to use, at all times for municipal purposes, one cubic foot per second of time of the Waters of said Cub River to be diverted from Ranger Spring, one of the tributaries of said Cub River, through the diverting works and pipe line now maintained and operated by said City, said right to date from the year A.D. 1879, and is entitled to the further right, at all times, 13-0028 to the use of all of the waters of Birch Springs, formerly a tributary of said Cub River, said right to date from the year A.D. 1882, the said water to be diverted through the pipe line and diverting works now operated and maintained by said City. Said City, subject to the completion of the terms of the contract between it and the Cub River Irrigation Company, is entitled to use from Ranger Spring, during the whole of each and every year, such quantity of the waters of Cub River as may be conveyed to it by said Cub River Irrigation Company, pursuant to said contract, not exceeding at any time two and one-half cu. ft. per second.

13-0029 NINTH: That defendants, B. M. Burbank and Caroline J. Allred are the owners of a primary right to the use of two cubic feet per second of time of the waters of Cub River, their right to the use of the same to date from the

VOID

Transfer No. _____

Water Right No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant City of Preston, Idaho Phone 852-1817
 Post Office address City Hall, Preston, ID. 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-0027 Decreed to City of Preston, Idaho
(Name)
 in case of Henry T. McEwain vs Franklin Sugar Co.
 dated in July 9, 1924 in 5th Judicial Dist. county of Franklin
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____

3. Source of water Ranger Springs tributary to Cub River

4. Date of priority 1879

5. Water is used for the following purposes:

amount 1 cfs for culinary & municipal purposes from January 1 to December 31
 amount _____ for _____ purposes from _____ to _____
 amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. one cubic feet per second
 &/or
 b. _____ acre feet per annum

7. Location of original point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 4
 Township 15 S Range 41 East, B.M., in Franklin County

Additional points of diversion, if any Also located in SW 1/4 SW 1/4, Section 3, T15 S, R41 E., B.M. also known as Ranger Springs

8. Lands irrigated or place of use:

* Place of use is within city limits of Preston, Idaho and with contractees of city.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
*																			

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above 130028
130026

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a one cubic feet per second
b. acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 4 Township 15 South
Range 41 East, B.M., Franklin County
Additional points SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 15 South, Range
41 East, B.M. Also known as Ranger Spring

3. Place of use:
*Place of use is within city limits of Preston, Idaho and with contractees of the city.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
*																			

Total number of acres to be irrigated

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information

- a. Amount of water to be diverted one c.f.s. &/or acre feet
- b. Description of diverting works headgate and city pipeline at Berquist Springs
- c. Describe the reasons for the proposed changes Changes in point of diversion from Ranger Springs to Berquist Springs (tributary to Cub River) to facilitate delivery of water to City of Preston for culinary and municipal use.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10 Township 15 S
Range 41 E., B.M., Franklin County
Additional points NW $\frac{1}{4}$ NW $\frac{1}{4}$; Sec. 11, T. 15S. R. 41 E.
Franklin County

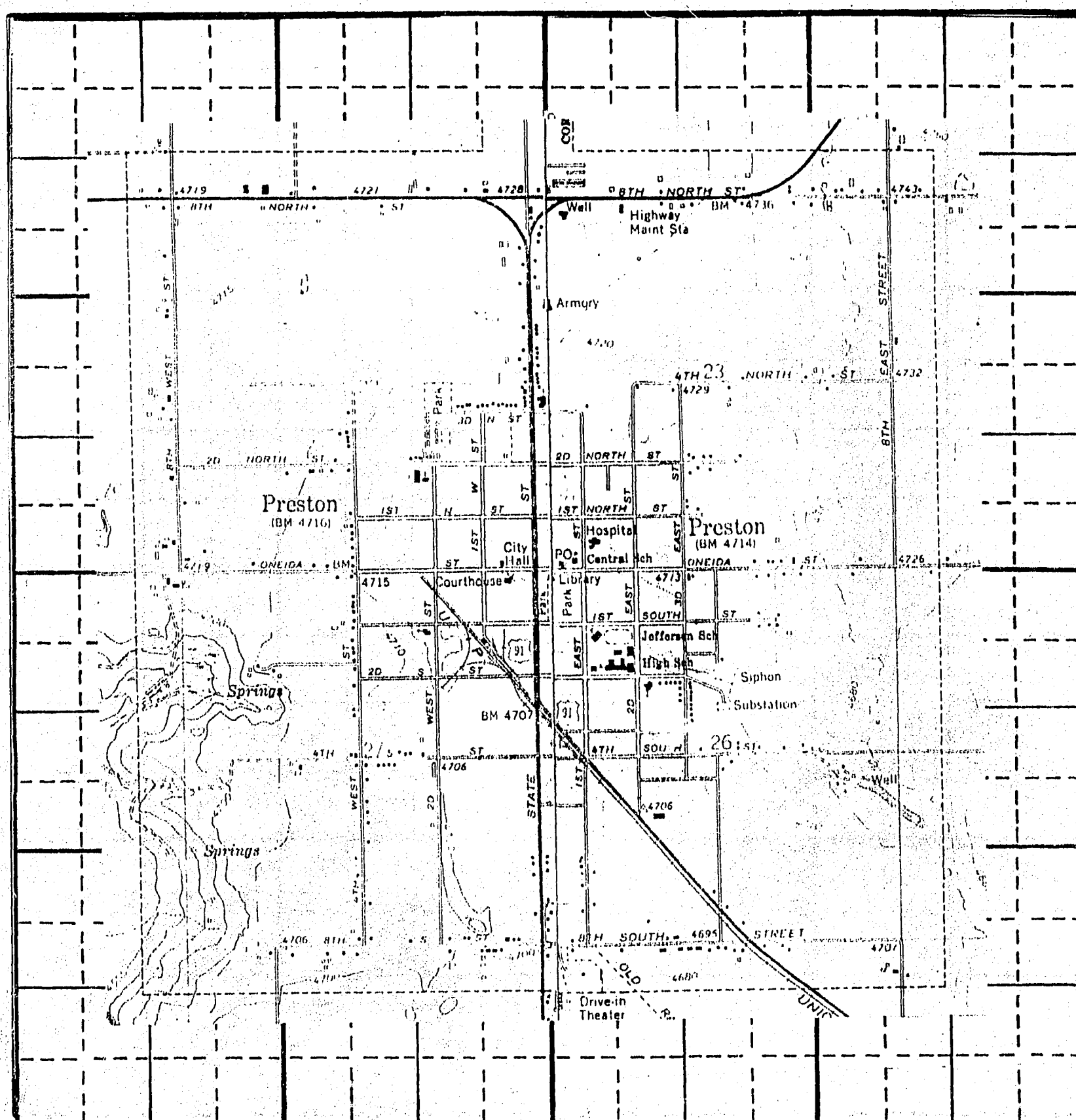
3. Change in place of use

- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
None

* To be used within City Limits of Preston, Idaho and with contractees of City

Total number of acres to be irrigated _____

4. Describe any other water rights used for the same purpose as described above. 13-0026;
13-0028
-
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the
land involved by section, township and range number. Used within city limits of
Preston, Idaho and with contractees of the city



SCALE: 2 inches equal 1 mile. Draw plan in ink.

D. REMARKS

Water has been diverted pursuant to this right from Berquist
Springs for approximately 50 years through Preston City water lines.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement
in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

Attest:

Arthur Neal
City Clerk

CITY OF PRESTON, IDAHO

By: Reed Breuchley
Mayor (Signature of Applicant)

Subscribed and sworn to before me this _____ day of _____, 19 _____

(Notary Public)

My commission expires _____

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____
and said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____

FOR DEPARTMENT USE ONLY

Received by <u>CW</u>	Date <u>9-19-83</u>	Protest filed by _____
Prelim. check by _____	Fee <u>50.00</u>	_____
Receipted by <u>BP</u>	Date <u>9/19/83 #29680</u>	_____
Published in _____	Copies of protest forwarded by _____	
Pub. dates _____	Hearing held by _____ Date _____	
Watermaster recommendation requested on _____	Recommended for <u>approval</u> denial	
_____ rec'd. _____	by <u>gt</u> <u>9-11-91</u>	

dignity as to priority, and prior to July 1st, each season the Cub River Middle Ditch Company shall use 4/9ths of the water herein decreed to both Companies and the said Cub River and Worm Creek Canal Company shall use 5/9ths of the same; and after said first day of July, of each year, said water herein allotted to said Companies shall be used jointly by them, share and share alike.

13-0027 EIGHTH: That the defendant, Preston City, is the owner of the right to use, at all times for municipal purposes, one cubic foot per second of time of the Waters of said Cub River to be diverted from Ranger Spring, one of the tributaries of said Cub River, through the diverting works and pipe line now maintained and operated by said City, said right to date from the year A.D. 1879, and is entitled to the further right, at all times, 13-0028 to the use of all of the waters of Birch Springs, formerly a tributary of said Cub River, said right to date from the year A.D. 1882, the said water to be diverted through the pipe line and diverting works now operated and maintained by said City. Said City, subject to the completion of the terms of the contract between it ~~and the~~ Cub River Irrigation Company, is entitled to use from Ranger Spring, during the whole of each and every year, such quantity of the waters of Cub River as may be conveyed to it by said Cub River Irrigation Company, pursuant to said contract, not exceeding at any time two and one-half cu. ft. per second.

13-0029 NINTH: That defendants, B. M. Burbank and Caroline J. Allred are the owners of a primary right to the use of two cubic feet per second of time of the waters of Cub River, their right to the use of the same to date from the year A.D. 1882; said water to be diverted and measured at the headgate of the Cub River Middle Ditch Company's canal, and to be used upon and for the irrigation of lands belonging to said parties, lying within Sections 26 and 27 of Township 15 South of Range 40 East of the Boise Meridian.

13-0009 TENTH: That defendant Grace H. Woolley is the owner of a primary right to the use at all times during the irrigation season of all of the waters flowing in the silver creek, a tributary of Cub River, her right to the use of the same, to date from the year A. D. 1879; said water to be measured at the point of diversion from said Silver Creek and her said rights to be confined to the waters of said Creek, and use for the irrigation of the following described lands, to-wit:

Commencing at a point at the Northeast corner of the Southeast quarter of Section 24, Township 15 South of Range 40 East of the Boise Meridian, thence running East ^{1320'} 80 rods; thence South ^{5280'} 320 rods; thence West ^{1320'} 80 rods; thence North ^{5280'} 320 rods, to the place of beginning.

Also the East half of the Southeast quarter of Section 24, and the East half of the Northeast quarter of Section 25, and the West half of the Southeast quarter of Section 24, all in Township 15 South of Range 40 East of the Boise Meridian.

That except for such rights as the defendant Virgil L. Nelson may have under agreement with the said Grace H. Woolley in and to the use of the waters herein allotted to said Grace H. Woolley, the said defendant Virgil L. Nelson has no right, title, or interest

#875

DEC 28 1983

No 2022

AFFIDAVIT OF PUBLICATION

STATE OF IDAHO, }
 County of Franklin } ss.

J. Walter Ross

being duly sworn,

deposes and says:

That he is the Co-Publisher of THE PRESTON CITIZEN, a weekly newspaper published at Preston, in the County of Franklin and State of Idaho; that said paper has been and is in general circulation in the county aforesaid, and in the vicinity of Preston; that the advertisement, a copy of which is attached hereto, was published in said newspaper once

a week for 2 consecutive weeks in the regular and entire issue of said paper during the period of time of publication, and was published in the newspaper proper and not a supplement; that said paper has been established and regularly published for more than seventy-eight consecutive weeks prior to the date of first publication of said advertisement.

Such notice was published in the issue beginning with

Dec. 15, 1983, and ending

with the issue of Dec. 22, 1983.

Fee \$ 25.00Subscribed and sworn to before me this 31st day

of Dec. 1983.

K. O. Allen

Notary Public, Residing at Preston, Idaho

My Commission Expires June 7, 1986RECEIVED
JAN 10 1984Department of Water Resources
Eastern District OfficeNOTICE OF PROPOSED CHANGE
OF WATER RIGHT

No. 13-0027

Notice is hereby given that the City of Preston, Idaho, has applied to the Dept. of Water Resources for a change in the point of diversion and source of the waters of Ranger Springs tributary to Cub River. The right sought to be changed is evidenced by Decree No. 13-0027 to City of Preston, Idaho, in case of Henry T. McEwain vs. Franklin Sugar Co. dated in July 9, 1934 in Fifth Judicial District Court, Franklin County and is recorded as follows:

AMOUNT: 1.00 cfs

PRIORITY: 1879

POINT OF DIVERSION: SE 1/4 SE 1/4 Sec. 4, SW 1/4 SW 1/4 Sec. 3 T. 15S, R. 41E, B.M. Franklin County

The water is used for municipal purposes within the city limits of Preston, Idaho.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE 1/4 NE 1/4 Sec. 10, NW 1/4 NW 1/4 Sec. 11, T. 15S, R. 41E, B.M. Franklin County and the source will be changed from Ranger Springs to Bergquist Springs tributary to Cub River.

Any protests against the above proposed change of water right must be filed with the Dept. of Water Resources, 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83401, on or before January 3, 1983.

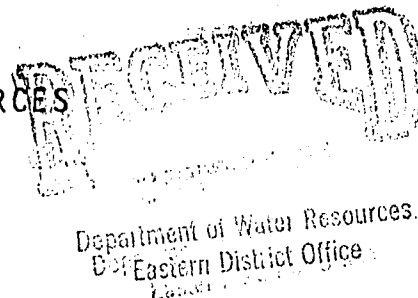
A. KENNETH DUNN

Director

Published in the Preston Citizen on 12/15 & 12/22/83.

Legal No. 2022 -401- Published December 15, 22, 1983.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO



IN THE MATTER OF THE APPLICATION	}	PROTEST OF CUB RIVER
OF THE CITY OF PRESTON, APPLICA-		IRRIGATION COMPANY
TION NO. 13-0027 TO CHANGE		Application No. 13-0027
THE POINT OF DIVERSION OF RANGER		To Change Point of Diversion
SPRING ON CUB RIVER.		

COMES NOW, the CUB RIVER IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is Lewiston, Utah; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0027, of Preston City to change the point of diversion of Ranger Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho, and Cache County, Utah, and has been so engaged for more than 104 years last past.

2. That the CUB RIVER IRRIGATION COMPANY is the owner of a decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.

3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs.

DATED This 30th day of December, 1983.

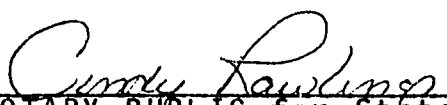
CUB RIVER IRRIGATION COMPANY

By Regan Wheeler
REGAN WHEELER, President

STATE OF IDAHO)
County of Franklin)

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared BLAINE GAMBLE, known to me to be the President of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

RECEIVED
Department of Water Resources
District Office

IN THE MATTER OF THE APPLICATION
OF THE CITY OF PRESTON, APPLICA-
TION NO. 13-0027 TO CHANGE
THE POINT OF DIVERSION OF RANGER
SPRING ON CUB RIVER.

PROTEST OF PRESTON WHITNEY
IRRIGATION COMPANY
Application No. 13-0027
To Change Point of Diversion

COMES NOW, the PRESTON WHITNEY IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Angus Condie, Preston, Idaho; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0027, of Preston City to change the point of diversion of Ranger Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the
Idaho. - Counsel for Protestants.

2. That owner and successor
River as provided
District in the
Company, et al.

- Williams & Castleman
Law Offices
P.O. Box 191
Preston, Idaho

ION COMPANY is the
er rights in Cub
Fifth Judicial
County Sugar

3. That
change the point
reasons that the
device on its culinary water line at Berquist Springs.

83263

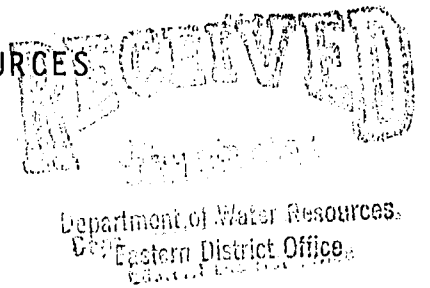
the application to
n City for the
n adequate measuring

DATED This 30th day of December, 1983.

PRESTON WHITNEY IRRIGATION COMPANY

By Blaine Gamble
BLAINE GAMBLE, President

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO



IN THE MATTER OF THE APPLICATION
OF THE CITY OF PRESTON, APPLICA-
TION NO. 13-0027 TO CHANGE
THE POINT OF DIVERSION OF RANGER
SPRING ON CUB RIVER.

PROTEST OF PRESTON WHITNEY
IRRIGATION COMPANY
Application No. 13-0027
To Change Point of Diversion

COMES NOW, the PRESTON WHITNEY IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Angus Condie, Preston, Idaho; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0027, of Preston City to change the point of diversion of Ranger Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho.
2. That the PRESTON WHITNEY IRRIGATION COMPANY is the owner and successor in interest to decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.
3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs.

DATED This 30th day of December, 1983.

PRESTON WHITNEY IRRIGATION COMPANY

By Blaine Gamble
BLAINE GAMBLE, President

STATE OF IDAHO)
County of Franklin)

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared REGAN WHEELER, known to me to be the President of the corporation that executed the foregoing instrument, an acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho

No. 7480

DECREE.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF ONEIDA.

The Cub River Irrigation Company,
a corporation,..... Plaintiff,

-VS-

The Cub River Middle Ditch Company, a
corporation,..... Defendant,

and

The Franklin Cub River Canal Company, a corporation;
The Cub River and Worm Creek Canal Company;
Lamoni Taylor, Edward M. Perkins, Lorenzo
Cutler, Calvin Wheeler, William S. Bodily,
Orrin J. Merrill, Erasmus Olsen, Henry Day,
Franklin Taylor, Joseph A. Stone, Mary Ann
Buckley, Heber Taylor, Joseph Hefi, Harriner W.
Merrill, Robert Hull and O. Preston Merrill,

Intervenors.

D E C R E E

This cause came on regularly for trial, in open court on the
24th day of January, 1906, before the Judge sitting without a Jury.

Messrs. Hart & Nebeker and Messrs. Standrod & Terrell appeared
as counsel for the plaintiff, the Cub River Irrigation Company;

Messrs. Arthur Hart, F. S. Dietrich and D. C. McDougall appear-
ed as counsel for the defendant, the Cub River Middle Ditch Company;

Messrs Hart & Nebeker appeared as counsel for the intervenor,
the Franklin Cub River Canal Company; George E. Gray Esq., and Joseph
Davis Esq., appeared as counsel for intervenor, the Cub River and Worm
Creek Canal Company; S. D. Davis, Esq., appeared as counsel for inter-
venors, Calvin Wheeler, Lamoni Taylor, and Edward M. Perkins; Messrs.
Hart & Nebeker appeared as counsel for intervenors, William S. Bodily,
Orrin J. Merrill, Erasmus Olsen, Henry Day, Franklin Taylor, Robert Hull,
and O. Preston Merrill; Joseph A. Stone and Mary Ann Buckley appeared by
Arthur Hart and D. C. McDougall, Esquires, who also appeared for Heber

Exhibit # 1

Taylor and Joseph Neff; and W. W. Maughan and L. R. Rogers, Esquires appeared on behalf of intervenor, Marriner W. Merrill.

Testimony on behalf of the plaintiff was heard from witnesses introduced in its behalf, and documentary evidence in its behalf, was ordered and received;

Witnesses on behalf of the defendant and the intervenors were also called, sworn and examined, in behalf of said defendant and intervenors offering the same, and also documentary evidence was offered and received in their behalf, respectively;

And after examining all the testimony offered and received for and on behalf of the respective parties, and the stipulations entered into between the said parties, and after hearing the arguments of the respective counsel aforesaid, the Court took said cause under consideration; and after having duly considered the law and the evidence, and being fully advised in the premises, the Court made its findings and conclusions;

WHEREFORE, IT WAS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:--

First.

That the intervenor, Marriner W. Merrill, take nothing by his cross-complaint filed herein and that his cause of action therein be dismissed absolutely.

Second.

That the plaintiff is entitled to the use, at all times, of forty-five (45) cubic feet per second of flow of all of the water of Cub River aforesaid, and forty-five hundredths (45/100ths) excess of high water of said stream to the extent of the capacity of said canal, its capacity being 158 second feet, its right to the use thereof to date from A. D. 1880; said water to be measured at the waste gate in said Company's canal at a point where the same is now situated, about one mile below the headgate of said canal.

Third.

That the said defendant, the Cub River Middle Ditch Company, is entitled to the use, at all times of thirty (30) cubic feet per

second of time of all of the waters of said Cub River, and to thirty hundredths (30ths) of the excess of high water, to the extent of the capacity of its said canal, its capacity being 69.9 second feet, its right to the use thereof to date from A. D. 1882, said water to be measured at the head gate in said company's canal, at the point where the same is now situated, below, the headgate of said canal.

Fourth.

That the Cub River and Worm Creek Canal Company is entitled at all times, to twenty five (25) cubic feet per second of time of all of the waters of said Cub River, and to one-fourth (1/4th) of the excess of high water of said stream, to the extent of the capacity of its canal the capacity of said canal being 85 second feet, its right to the use thereof to date from A. D. 1882; said water to be measured at the headgate of said company's canal, where said canal intercepts said stream.

Fifth.

That the Franklin Cub River Canal Company, intervenor, is entitled, at all times, to five (5) cubic feet per second of time of all of the waters of said Cub River, its right to the use thereof to date from A. D. 1882; and the water to be measured at the headgate of said company's canal, where the same intercepts said stream.

†

Sixth.

That as between the said Cub River Middle Ditch Company and the said Cub River and Worm Creek Canal Company, the rights hereinbefore decreed to them shall be of equal dignity as to priority; and prior to July first of each season the said Cub River Middle Ditch Company shall use four ninths (4/9th) of the water hereinbefore decreed to both of said companies and the said Cub River and Worm Creek Canal Company shall use five ninths (5/9ths) of same; and after said first day of July of each year, said water herein allotted to said companies shall be used by them jointly, share and share alike.

Seventh.

That the intervenors, O. J. Merrill, William S. Bodily, and Erasmus Olsen, are entitled, at all times, to one (1) cubic foot per second of time of all of the waters of said Cub River their right to the use of the same to date from A. D. 1879; and the further right, at all times of two (2) cubic feet per second of time of said waters, their right to the use of

the same to date from A. D. 1882, said water to be diverted and measured at the headgate of the Cub River Middle Ditch Company's canal, and to be used upon and for the irrigation of lands belonging to said parties, lying within sections 26 and 27, in township 15 south of Range 40 East of the Boise Meridian.

Eighth.

That the intervenors, Heber Taylor, and Joseph Neff are entitled at all times, to all of the waters flowing in Silver Creek, a tributary of said Cub River, their right to the use of the same to date from the year, 1879, and to be used in the proportions as follows;

The said Joseph Neff shall be entitled to the use of six eighths ($6/8$ th) of said water and the said Heber Taylor shall be entitled to the use of two eighths ($2/8$ ths) of said water, the same to be measured to said claimants at their respective headgates at said Silver Creek, and their rights to be confined, to the said waters of said Silver Creek.

The waters herein allotted to the said Joseph Neff shall be used upon and become appurtenant to the following described lands.

Commencing at a point at the Northeast corner of the Southeast quarter of section 24, in township 15 South, of Range 40 East of the Boise Meridian; thence running East 80 rods; thence South 320 rods; thence West 80 rods; thence north 320 rods to the place of beginning.

The waters herein allotted to said Heber Taylor, shall be used upon and become appurtenant to the following described lands;

The East half of the Southeast quarter of Section 24, and the East half of the Northeast Quarter of Section 25, and the West half of the Southeast quarter of Section 24, in township 15 South of range 40 East of the Boise Meridian.

Ninth.

That the intervenors Lamoni Taylor, Edward M. Perkins and Lorenzo Cutler are entitled, at all times to the use of seven and one fifth ($7\frac{1}{5}$ th) cubic feet per second of time of the waters of Sugar Creek, a tributary of said Cub River, and the intervenors, Calvin Wheeler, is entitled at all times, to two and two fifths ($2\frac{2}{5}$ ths) cubic feet per second of time of all of the waters of said Sugar Creek; the rights of said parties to the date of appropriation; to be measured at the respective headgates of said part-

ies, at said Sugar Creek, and said rights shall be confined to the waters of said Sugar Creek.

The waters herein allotted to said Lamon Taylor, Edward M. Perkins, and Lorenzo Cutler shall be used upon and become appurtenant to the following described lands:-

The East half of the North-west quarter of section 35, and the West half of the North-west quarter of Section 35, the Southwest quarter of Section 35, and the Southeast quarter of Section 34, all in township 15 South of Range 40 East of the Boise Meridian; and the North half of the Northwest quarter of Section 2, the Northeast quarter of the Northeast quarter of section 3, in Township 16 South of Range 40 East of the Boise Meridian, in accordance with the ownership of said claimants in and to said lands as the same appears from their respective titles.

And the waters herein allotted to said Calvin Wheeler shall be used upon and become appurtenant to the following described lands;

The Southeast quarter of the Southeast quarter of Section 26, and the West half of the Southwest quarter and the Southwest quarter of the Northwest quarter of section 25, all in Township 15 South of Range 40 East of the Boise Meridian.

Tenth

THAT Joseph A. Stone, intervenor is entitled to the use at all times, of three-fifths ($3/5$ ths) of one cubic foot per second of time of all the waters of said Creek; his right thereto to date from the year, 1892; and also to the additional right, at all times of four fifths ($4/5$ ths) of one cubic foot per second of time of all of the waters of said Sugar Creek, his right to the use thereof to date from the year, 1896; his right to be confined to the waters of said Sugar Creek; and to be measured at his headgate leading therefrom and shall be used upon and become appurtenant to the following described lands;

Commencing at a point 80 rods North of the North-east corner of Section 30, in township 15 South of Range 40 East of the Boise Meridian, thence running East 160 rods; thence North 80 rods; thence West 160 rods; thence South 80 rods to the place of beginning.

That Mary Ann Buckley, intervenor, is entitled at all times, to the use of four fifths ($4/5$ ths) of one cubic foot per second of time of all

the waters in said Sugar Creek, her right therein to date from the year, 1896, and to be confined to the waters of said Sugar Creek, and to be measured at the headgate of her ditch leading from said creek; said water to be used upon and to become appurtenant to the following described lands, to-wit:-

Commencing at the Northeast corner of section 36, in township 15 South of Range 40 East of the Boise Meridian; thence running East 80 rods; ^{thence North 80 rods} thence West 80 rods; thence South 80 rods to the place of beginning.

James Bowman

Twelfth.

That intervenor O. J. Merrill is entitled, at all times to the use of one (1) cubic foot per second of time of the waters of said Cub River, his right to the use thereof to date from the year, 1882, and the additional right of three-tenths (3/10ths) of a cubic foot per second of time of the waters of said stream, said additional right to date from the year, 1883, and to be used upon and become appurtenant to the lands owned by said claimant, lying within sections 24 and 15, ^{in Township 15} South of Range 40 East of the Boise Meridian; said waters to be conveyed through what is known as the Merrill, Day and Taylor ditch, and to be measured at the headgate thereof, which is near the headgate of the Cub River and Worm Creek Canal Company.

James Bowman
James Bowman

Thirteenth.

That the intervenor Henry Day is entitled, at all times to the use of one fourth (1/4th) of one cubic foot per second of time of the waters of said Cub River, his right to the use thereof, to date from the year, 1882, and the additional right of seven tenths (7/10ths) of a cubic foot per second of time of said waters, his right to said additional use to date from the year, 1892, and to be used upon and become appurtenant to the lands owned by said claimant, lying within sections 24, and 15, township 15 south of Range 40 East of the Boise Meridian. Said water to be conveyed through the Merrill, Day and Taylor ditch, and to be measured at the headgate thereof.

a. f. Shurt

Fourteenth.

That Franklin Taylor, intervenor, is entitled to the use at all times of one fifth (1/5th) of a cubic foot per second of time of all of the waters of said Cub River, his right to the use thereof, to date from the year, 1882, and the additional right to the use of said waters of seven tenths (7/10ths) of one cubic foot per second of time thereof, such additional use to date from the year, 1892, and to be used upon and to become appurtenant to the lands owned by said claimant, lying within sections 24 and 15, in

township 15 south of Range 40 East of the Boise Meridian. Said water to be conveyed through the said Merrill, Day and Taylor ditch, and to be measured at the head gate thereof.

Fifteenth.

That the intervenors Iamoni Taylor, Edward M. Perkins and Lorenzo Cutler, are entitled, at all times of the flow of the waters of said Cub River, to the use of said water as follows:

The said Iamoni Taylor to the use of three and one half (3-1/2) cubic feet per second of time;

The said Edward M. Perkins to one (1) cubic foot per second of time; and

The said Lorenzo Cutler to one and one half (1-1/2) cubic feet per second of time;

Their right to the use of said water to date from the year, 1884 and to be conveyed through what is known as Sugar Creek, ditch, and to be measured at the headgate of said ditch; and same to be used upon and to become appurtenant to the lands owned by them, lying within the East half of the Northwest quarter of section 35, the West half of the Northwest quarter of section 35, the Southwest quarter of said section 35, and the southeast quarter of section 34, all in township 15 south of range 40 East of the Boise Meridian, and the North half of the Northwest quarter of section 2, and the Northeast quarter of Section 3, in township 16 South of Range 40 East of the Boise Meridian.

Sixteenth.

That the intervenor Robert Hull is entitled, at all times to the use of all of the waters of Sheep Creek, a tributary of Cub River, arising upon or above his premises, described as part of the Northwest quarter of the Southeast quarter and the Southeast quarter of the Southeast quarter of Section 14, and the Northeast quarter of the Northeast quarter of section 2, in township 15 south of range 40 East of the Boise Meridian, his right to the use thereof to date from the year, 1890, and to be used upon and become appurtenant to the lands owned by said claimant above described.

Seventeenth.

That the intervenor O. Preston Merrill is entitled, at all times, to the use of all of the waters of Sheep Creek, a tributary of Cub River, flowing from and below the lands of the said intervenor Robert Hull above

described, and to be used upon the lands of the said O. Preston Merrill, lying and being in section 24, in township 15 south of range 40 East of the Boise Meridian, his right to the use thereof to date from the year, 1890, and to become appurtenant to the lands of the said O. Preston Merrill, above described.

Eighteenth.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that each of the parties hereto shall pay all the costs of the Clerk and all fees of witnesses incurred, by it, or him, or her; and the costs of the Court, Stenographer for transcribing testimony taken at the trial and for other services rendered herein, and the charges of the engineers for measuring the streams, canals, and ditches of the respective parties; and said costs and charges shall be paid by said parties of this action in the following proportions, to-wit:

The Plaintiff, the Cub River Irrigation Company, shall pay of said costs, \$185.70

The defendant, the Cub River Middle Ditch Company, shall pay of said costs \$58.20

The Franklin Cub River Company, shall pay of said costs \$14.70

The Cub River and Worm Creek Canal Company, shall pay of said costs, \$48.50.

O. J. Merrill shall pay of said costs \$5.90

Lamoni Taylor, Edward M. Perkins and Lorenzo Cutler, shall pay of said costs jointly, \$14.10

Calvin Wheeler, William S. Bodily and Orrin J. Merrill shall pay of said costs, \$11.35

Erasmus Olson, Henry Day, and Franklin Taylor, shall pay jointly of said costs, \$4.75

Joseph A. Stone and Mary Ann Buckley, shall pay jointly of said costs \$5.05.

Heber Taylor and Joseph Neff shall pay jointly of said costs \$2.90

Robert Hull and O. Preston Merrill, shall pay joint of said costs \$5.00

AND IT IS ORDERED, that the Clerk of this court shall tax said costs, and that execution may issue against the parties hereto for the amount of costs herein directed to be paid by them respectively.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that each and every of the parties to this action, the plaintiff and the defendant and

the intervenors, each and every of their servants (employees, and their successors in interest be, and they and each of them are hereby perpetually enjoined and restrained from in any manner interfering with the waters of said Cub River and the tributaries thereof, except as their rights as herein decreed, may appear, and each of said parties, his, her or its agents, servants, counselors, employees and successors in interest, are forever perpetually enjoined and restrained from in any way interfering with the rights of any other party or parties to this action, as said rights herein appear in the use of said waters, or in the use of any dam, conduit, canal, or other works in the diversion of any of said waters, except as their rights are herein defined and decreed with respect to the quantity of water herein allotted to each of said parties, respectively and with respect to the date of their respective appropriations, it being the intention of this decree that the rights of said parties to the use of said waters shall be governed according to the dates of their respective appropriations.

Done in open Court this 26th day of January, 1906.

Clerk's fees, - - - - \$23.00
 Sheriff's fees, - - - - 9.00
 Engineer Morgan, - - - - 9.00
 Engineer Swendsen, - - - - 36.00
 Stenographer, - - - - 278.40
 Telephoning, - - - - 75
 Total, - - - - \$355.15

Alfred Budge,
 District Judge.

Filed January 29th, 1907.

J.J. Evans, Clerk.
 By W.H. Richards, Deputy.

Recorded in Book "b" of Judgments at page 118, records of Oneida County, Idaho.

STATE OF IDAHO,
 County of Oneida, ss

CERTIFICATE OF TRUE COPY.

I, Jenkin Jones, Clerk of the District Court in and for said Court do hereby certify that the above and foregoing is a true full and complete copy of the Judgment rendered as found in Book "B" of Judgments records of Oneida County, State of Idaho, on page 418.

I further certify that I am unable to find the original files in action wherein the said Judgment was given and that all the record I have of the case is the record of the Judgment of which the above is a true copy.

Witness my hand this the 21st day of June, 1917.

Jenkin Jones,
 Clerk of the District Court,
 Malad Idaho.

(SEAL)
 Recorded June 26th, 1917, at 4:55 P.M. in Book
 "1" of Judgments at page 164. *In County records.*

FEB 2 1984
FEB 2 1984

*New Agreement sent to Preston City by Cub River
Irrigation Co.*

AGREEMENT.

THIS AGREEMENT, Made and entered into this 27th day of February, A.D., 1920, by and between the CUB RIVER IRRIGATION COMPANY, an Idaho corporation, hereinafter called the first party, and the CITY OF PRESTON, a Municipal Corporation, of Franklin County, Idaho, hereinafter called the second party, WITNESSETH:

The second party is a Municipal Corporation of Franklin County, Idaho, and is in need of an additional supply of water for culinary and domestic use of its inhabitants and for municipal purposes.

The first party is the owner of a decreed water right in Cub River in Franklin County, Idaho, as appears from a decree made and entered in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Oneida, on January 26th, 1906, in an action therein pending in which the first party was the plaintiff and The Cub River Middle Ditch Company, a corporation, was defendant, and The Franklin Cub River Canal Company, a corporation, et al., were intervenors, which decree is recorded in Record Book "B" of said District Court on page 418, which right entitles the first party to the use at all times of forty-five cubic feet per second of time of all waters of Cub River aforesaid herein referred to as its primary right in addition to certain rights to the high waters of said stream as mentioned in said decree, which primary right was granted a priority as of the year 1880.

The second party heretofore brought an action in the District Court of the Fifth Judicial District of the State of Idaho in and for Franklin County, against the first party seeking to condemn the right of the first party to the water of Ranger Station Spring, a tributary of said Cub River, for the use and benefit of the inhabitants of said city for domestic and culinary purposes, which action is still pending.

A settlement of the said controversies out of court being desired

Exhibit #2

by the parties hereto, they do hereby mutually covenant and agree as follows:

The first party will execute and deliver to the second party, upon the execution and delivery by it of the deed and the payment by it of the sum hereinafter mentioned, a good and sufficient conveyance of the right to use at all times one-eighteenth (1/18) of the waters of said Cub River to which the first party is entitled under its said primary right, reserving and excepting however all its right to use the excess on high water of said stream, the water to be measured at the intake to be hereafter constructed by the second party either at the said spring or between the spring and Cub River at the option of the second party. The second party will pay to the first party for such conveyance on the delivery thereof the sum of Twenty-eight Thousand Five Hundred (\$28,500.) Dollars, lawful money of the United States of America, and at the same time will execute and deliver to the first party a good and sufficient conveyance of the right at all times to use all of the waters which now flow, and which may hereafter flow out of the sewer and underground drainage systems of the second party as now constructed, and as the same may be re-constructed, enlarged or extended hereafter.

Before the second party diverts any of the waters hereby agreed to be conveyed, it will at its own expense, construct and install at the intake of its water system as above stated, an adequate and suitable measuring device for the measuring of the said waters, and it will at all times hereafter maintain such device in good condition for the accomplishment of such measurement, which device shall at all times be kept by the second party under lock and key. The first party shall be allowed a key thereto, and shall at all times have right of access for the purpose of determining the sufficiency of the device and the quantity of water flowing into the second party's water system.

The second party will proceed at once to the construction of a suitable and adequate filter for the filtration of all the waters flowing or to flow out of its sewer and underground drainage systems, as above stated, and at all times it will cause all of such waters to be so filter

ed that they will be free from offensive odors and from disease producing bacteria, and collect such waters at the filter in a pipe not less than twelve (12) inches in diameter after the waters have been so filtered, and conduct them by such pipe to, and discharge them into the west canal of the first party immediately above the headgate in the William Tanner field, all at the expense of the second party. The second party will also at all times keep such waters free from poisonous constituents and properties.

The above mentioned condemnation proceedings shall be dismissed forthwith upon the merits neither party to recover costs against the other.

The first party heretofore brought an action in the same court against the second party upon the alleged wrongful use, by the second party, of the waters of a certain spring known as Birch Spring alleged to be a tributary of Cub River. The said action shall be dismissed forthwith without a determination by the court or the parties thereto as to whether the second party, either by adverse user of the waters of said spring, or by estoppel, or otherwise, has acquired title to any part of the water right heretofore owned by the first party. Neither party to such action shall recover costs against the other.

The conveyance to be made by the first party to the second party as above provided, shall recite that it is made subject to the fluctuations in the flow of said river, so that should the flow at any time be less than sufficient to supply the full forty-five second feet upon the primary right hereinbefore mentioned, then the party of the second part herein shall be entitled hereunder to one-eighteenth only of the flow available on the said right.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective officers thereto duly authorized

STATE OF Utah)
County of Cache) SS.

On this 27th day of February, in the year 1920,
before me Christian Jacobsen, a Notary Public in and for
said County, personally appeared George Warren
and Wm. L. Simpson known to me to be the President
and Secretary, respectively, of the corporation that executed the fore-
going instrument and acknowledged to me that such corporation executed
the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day
and year first above written.

My commission expires:
Feb. 19, 1921

Christian Jacobsen
NOTARY PUBLIC.
Residing at Logan, Utah

STATE OF IDAHO,)
County of Franklin.) SS.

On this 27th day of February, in the year 1920,
before me J. S. Marron, a notary public in and for
said County, personally appeared J. S. Marron and W. Chatterton,
known to me to be the MAYOR and CITY CLERK, respectively, of the City
of Preston, a Municipal Corporation that executed the foregoing instru-
ment and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day
and year first above written.

My commission expires:
2/2/22.

J. S. Marron
NOTARY PUBLIC.
Residing at: Preston, Idaho

this 27th day of February, A.D., 1920.

Signed in the presence of

Christian Jacobson

P. J. Evans

CUB RIVER IRRIGATION COMPANY.

By George Warren
PRESIDENT.

ATTEST:

Morris J. Luningard
SECRETARY.

CITY OF PRESTON

By J. M. Brown
MAYOR.

ATTEST:

M. C. ...
CITY CLERK.

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR FRANKLIN COUNTY.

HENRY T. McEWAN,
Plaintiff

VS

FRANKLIN COUNTY SUGAR COMPANY,
a corporation; CITY OF PRESTON,
a municipal corporation; THE CUB
RIVER IRRIGATION CO., a corporation,
THE CUB RIVER MIDDLE DITCH CO., a
corporation; THE FRANKLIN CUB RIVER
CANAL CO., a corporation; THE CUB RIVER
AND WORM CREEK CANAL CO., a corporation;
B. M. BERBINE, CAROLINE J. ALLRED, GRACE
H. WOOLEY, VIRGIL L. NELSON, HENRY F.
BENNETT, MERLIN PERKINS, JIM S. PERKINS,
JAMES ELLER JR., JOE. SHARP, C. M.
BRYSON, MARY ANN BUCKLEY MOORE, HENRY DAY,
J. L. DUNKLEY, JOSEPH T. SHARP, ALVIN C.
HULL, LEROY HULL, PRISCILLA BOWMAN, TRACY
LOAN & TRUST COMPANY, a corporation, AND
S. W. PARKINSON, as Administrators of the
estate of Samuel C. Parkinson, deceased;
ALVIN SHARP, C. CIL WOODWARD, GARNET WOODWARD,
FRANKLIN MAPLE CREEK PIONEER IRRIGATION COMPANY, a corporation,
ELIZA D. LOWE, ELIZABETH K. LOWE,
LEVI OLIVERSON, JOHN W. GIBSON, WM. FOLLETT,
and HOWARD GIBSON, as Administrators of the Estate
of W. K. Gibson, deceased; WALLACE CHATTERTON, S.
B. WRIGHT, S. J. HANBY, W. CHATTERTON, AARON
CHATTERTON, JOANNA WHITEHEAD, IVAN WOODWARD,
EDWARD MORGAN, THOMAS HAWORTH, W. L. WICKHAM,
PETER G. WHITEHEAD, WILLIAM STOCKDALE, P. A.
ROBINSON; AND ALVIN C. HULL, as Administrator
of the Estate of Robert M. Hull,

Defendants.

This cause came on regularly for trial on the 10th day of March, 1924, before Honorable O. R. Baum, one of the Judges of the said court at Preston, Idaho, Charles H. Hart, Esq., of Salt Lake City, Utah, and P. J. Evans, Esq., of Preston, Idaho, appearing as Attorneys for the plaintiff, Henry T. McEwan; Day, Hopbaugh & Mark, Esqs., and Arthur W. Hart, Esq., appearing as attorneys for the defendant Franklin County Sugar Company, a corporation; F. M. Condie, Esq., appearing as attorney for the defendant and cross-complainant the City of Preston, a municipal corporation; Clark, Richards & Bowen, Esqs., and C. E. Crowley, Esq., appearing as attorneys for the defendant and cross complainant, The Cub River Irrigation Company, a corporation; A. W. Hart, Esq., appearing as attorney for the defendant and cross complainant, The River Middle Ditch Company, a corporation, and for the defendant and cross-complainant, The Cub River & Worm Creek Canal Company, a corporation, and also for the defendant and cross complainants Alvin C. Hull, Leroy Hull and Alvin C. Hull as administrators of the estate of Robert M. Hull, deceased; and none of the other defendants appearing, either personally or by counsel, and the default of all of said other defendants having been entered for failure to answer or otherwise plead to the complaint and amended complaint of the plaintiff, and the cross complaint of the City of Preston, a municipal corporation, and for the failure to answer the cross complaint of the defendant Cub River Irrigation Company, a corporation, in accordance with

the receipts for default filed herein, and the judgment of default having been entered herein against such defaulting defendants, and testimony on behalf of the plaintiff and of the appearing defendants and cross complainants both oral and documentary, having been offered and received by the Court on behalf of each of said parties respectively, and the parties having, by consent of the Court, agreed among themselves with reference to certain facts and the Court having examined all the testimony offered and received for and on behalf of the respective parties and the agreements and stipulations entered into between the said parties and having taken the said cause under consideration and being fully advised in the premises, and having made and entered its findings of Fact and Conclusions of Law herein in writing and ordered judgment to be entered in accordance therewith.

IT IS NOW BY THE COURT, ORDERED, ADJUDGED AND DECREED, as follows:

FIRST: That the irrigation season, as the term is used herein, begins on the first day of April and extends to the 31st. day of October of each and every year and the non-irrigation season extends from the first day of November of each year to the first day of April of the succeeding year.

SECOND: That irrigation rights as herein awarded and decreed are of two classes, primary rights and excess or high water rights.

The primary rights include the right to use at all times during the irrigation season, in the amounts herein awarded to the various appropriators respectively, and in the order of their respective priorities, the quantity of water specifically allotted to the various appropriators for irrigation purposes, exclusive of the excess or high water rights awarded to Cub River Irrigation Company, a corporation, Cub River Middle Ditch Company, a corporation, and Cub River & Worm Creek Canal Company, a corporation, Paragraphs Third and Fourth and Fifth hereof.

Excess or high water rights are defined to be the right to use by defendants, Cub River Irrigation Company, Cub River Middle Ditch Company, and Cub River Worm Creek Canal Company, a corporation, during the irrigation season, for irrigation purposes, in the amounts and with the priorities in said Paragraphs Third, Fourth and Fifth hereof specifically set out, all waters flowing in the said Cub River and its tributaries in excess of the amount of water necessary to satisfy the primary irrigation rights as herein allotted.

THIRD: That the defendant, Cub River Irrigation Company, a corporation is the owner of a primary right to use, at all times during the irrigation season, of 45 cubic feet per second of time of all the waters of said Cub River and in excess of high waters right to the use of 45/100ths of said stream after the primary irrigation rights herein decreed are satisfied, up to a total of 158 cubic feet per second of time, its rights to the use of said water to date from the year A.D. 1880; said water to be measured at the waste gate in said Company's canal at a point where the same is now situated and about a mile below the headgate of said canal, and to be used for the irrigation of 1800 acres of land lying in Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 25, 26, 27, and 28, Township 16 South of range 29 East of the Boise Meridian in Franklin County, Idaho, and sections 35 and 36, township 15 N. of range 1 West of the Salt Lake Meridian, Cache County Utah, and sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 28, 29, 30, 31, and 32 Township 14 North of range 1 East of the Salt Lake Meridian in Cache County, Utah.

FOURTH: That the defendant Cub River Middle Ditch Company is the owner of a primary right to the use, at all times during the irrigation season, of 30 cubic feet per second of time of all of the waters of said Cub River, and of an excess or high water right in the order of its priority of 30/100ths of the waters of said stream, after the primary rights herein allotted for irrigation purposes are specified, up to the extent of 69.9 second feet, its right to the use of said waters to date from the year A.D. 1882; said waters to be measured at the waste gate in said Company's canal, at a point where it is now situated below the headgate of said canal.

FIFTH: That the Cub River and Worm Creek Canal Company is the owner of a primary right to the use at all times during the irrigating season of 25 cubic feet per second of time of all of the waters of said Cub River, and is also owner of an excess of high water right in the order of its priority to the extent of 1/4 of the waters of said stream, after the primary rights herein decreed are fully satisfied. The total right of said company, nevertheless, not to exceed 85 cubic feet per second of time. The right to the use of the said waters by said Company to date from the year 1882, and that said water to be measured at the headgate of said canal company, where said canal intercepts said stream.

SIXTH: That the Defendant, Franklin Cub River Canal Company, is the owner of a primary right to use, at all times during the irrigation season, five cubic feet per second of time of all of the waters of said Cub River, its rights to the use thereof to date from the year 1882, and the said water to be measured at the head gate of said Company's canal, where the same intercepts said Cub River.

SEVENTH: That as between the said Cub River Middle Ditch Company and the said Cub River and Worm Creek Canal Company, the rights herein decreed to them shall be of equal dignity as to priority, and prior to July 1st. each season the Cub River Middle Ditch Company shall use 4/9ths of the water herein decreed to both Companies and the said Cub River and Worm Creek Canal Company shall use 5/9ths of the same; and after said first day of July, of each year, said water herein allotted to said Companies shall be used jointly by them, share and share alike.

* EIGHTH: That the defendant, Preston City, is the owner of the right to use, at all times for municipal purposes, one cubic foot per second of time of the waters of said Cub River to be diverted from Kanger Spring, one of the tributaries of said Cub River, through diverting works and pipe line now maintained and operated by said City, said right to date from the year A. D. 1879, and is entitled to the further right, at all times, to the use of all of the waters of Birch Springs, formerly a tributary of Cub River, said right to date from the year A. D. 1882, the said water to be diverted through the pipe line and diverting works now operated and maintained by said City. Said City, subject to the completion of the terms of the contract between it and the Cub River Irrigation Company, is entitled to use from Kanger Spring, during the whole of each and every year, such quantity of the waters of Cub River as may be conveyed to it by said Cub River Irrigation Company, pursuant to said Contract, not exceeding at any time two and one half cu. ft. per second.

NINTH: THAT Defendants, B. K. Burbank and Caroline Allred are the owners of a primary rights to the use of two cubic feet per second of time of the waters of Cub River, their right to the use of the same to date from the year A. D. 1882, said water to be diverted and measured at the headgate of the Cub River Middle Ditch Company's Canal, and to be used upon and for the irrigation of lands belonging to said parties lying with in Sections 26 and 27 of Township 15 South of Range 40 East of the Boise Meridian.

TENTH: THAT defendants Grace H. Woolley is the owner of a primary right to the use at all times during the irrigation season of all of the waters flowing in Silver Creek, a tributary of Cub River, her right to the use of the same to date from the year A. D. 1879; said water to be measured at the point of diversion from said Silver Creek and her said rights to be confined to the waters of said Creek, and use for the irrigation of the following described lands, to-wit:

Commencing at a point at the Northeast corner of the Southeast quarter of Section 24, township 15 south of range 40 east of the Boise Meridian, thence running east 80 rods; thence south 320 rods; thence west 80 rods; thence north 320 rods, to the place of beginning;

Also the East half of the Southeast quarter of Section 24, and the East half of the northeast quarter of Section 25, and the west half of the southeast quarter of section 24, all in township 15 south of range

40 East of the Boise Meridian.

That except for such rights as the defendant Virgil L. Nelson may have under agreement with the said Grace H. Woolley in and to the use of the waters herein allotted to said Grace H. Woolley, the said defendant Virgil L. Nelson has no right, title or interest in or to the waters or use of the rights of said Cub River or its tributaries.

ELEVENTH: THAT the defendants, Henry F. Bennett, Merlin Perkins, James Perkins, and Janus Kellor, Jr., are owners of a primary right to the use, at all times during the irrigation season of $7\frac{1}{5}$ cubic feet per second of time of the waters of Sugar Creek, a tributary of said Cub River, and the defendant Joseph Sharp is the owner of a primary right to the use, at all times during the irrigation season, to $2\frac{2}{5}$ cubic feet per second of time of the waters of said Sugar Creek, the right of said parties to date from the year A. D. 1879, and to be of equal dignity with respect to date of appropriation, and to be measured at the respective headgates of the said parties, at their respective points of diversion from said Sugar Creek, and their said rights to be confined to the waters of said Sugar Creek.

The waters herein allotted to the said Henry F. Bennett, Merlin Perkins, James Perkins, and Janus Kellor, Jr., shall be used upon and become appurtenant to the following described lands:

The east half of the northwest quarter of section 35, and the west half of the northwest quarter of section 35, and the southwest quarter of section 35, and the southeast quarter of section 34, all in township 15 South of range 40 east of the Boise Meridian, and the North half of the Northeast quarter of section 2, the northeast quarter of the Northeast quarter of section 3, in township 16 south of Range 40 east of the Boise Meridian, in accordance with the ownership of said claimants in and to said lands, as the same appears from their respective titles.

And the water herein allotted to said Joseph Sharp shall be used upon and become appurtenant to the following described lands:

Southeast quarter of the southeast quarter of section 26, and the west half of the southwest quarter of the southwest quarter and the southwest quarter of the northwest of section 25, all in township 15 south of range 40 east of the Boise Meridian.

TWELFTH: THAT the defendant C. M. Eppich is the owner of a primary right to the use at all times during the irrigation season of $\frac{3}{5}$ ths of a cubic foot of all of the waters of said Sugar Creek, said right thereto to date from the year A.D. 1892, and also an additional primary right to use at all times during the irrigation season $\frac{4}{5}$ ths of one cubic foot per second of time of all of the waters of said Sugar Creek to date from the year 1896; the rights of the said C. M. Eppich to be confined to the waters of said Sugar Creek, which waters are to be measured at the head gate of said appropriator at his point of diversion from said stream, and the said waters to be used upon and become appurtenant to the following described lands:

Commencing at a point 80 rods North of the northeast corner of section 30, township 15 south, range 40 east of the Boise Meridian, thence running east 160 rods; thence north 80 rods; thence west 160 rods; thence south 80 rods, to the place of beginning.

THIRTEENTH: That the defendant Mary Ann Buckely McGee is the owner of a primary right to the use, at all times during the irrigation season of $\frac{4}{5}$ ths of one cubic foot per second of time of all of the waters of said Sugar Creek, her right thereto to date from the year 1896; and to be confined to the waters of said Sugar Creek, which are to be measured at her point of diversion from said Creek, said waters to be used upon and become appurtenant to the following described lands:

Commencing at the northeast corner of section 36, in township 15

South of range 40 East of the Boise Meridian, thence running East 80 rods thence North 80 rods; thence west 80 rods; thence south 80 rods, to the place of beginning.

FOURTEENTH: That the defendant D. M. Burbank is the owner of a primary right to the use, at all times during the irrigation season, for irrigation purposes, of one cubic foot per second of time of the waters of said Cub River, said right to date from the year A. D. 1882; and is also the owner of a primary right to the use of an additional $\frac{3}{10}$ ths of a cubic foot per second of time of the waters of said stream, to date from the year 1883, all of said waters to be used upon and to become appurtenant to the lands owned by said claimant, lying within section 24 and 15 in Township 15 South of Range 40 East of the Boise Meridian; said waters to be conveyed through what is known as the Merrill, Day and Taylor Ditch, and to be measured at the headgate thereof, which is now the headgate of the Cub River and Worm Creek Canal Company.

FIFTEENTH: That the defendant Henry Day is the owner of a primary right to the use, at all times during the irrigation season, of $\frac{1}{4}$ of one cubic foot per second of time of the waters of said Cub River, his said right to date from the year A.D. 1882; and is also the owner of a primary right to the use of an additional $\frac{7}{10}$ ths of a cubic foot per second of time of said water, to date from the year A.D. 1892, all of said water to be used upon and to become appurtenant to lands owned by said claimant lying within Sections 24 and 15 in Township 15 South of Range 40 East of the Boise Meridian, and to be measured at the headgate of said Merrill, Day and Taylor Ditch; that except for such rights as the defendant J. A. Dunkley may have in and to the use of the waters herein allotted to the said Henry Day, the said J. A. Dunkley has no right, title or interest in or to the use of the waters of said Cub River or any of its tributaries.

SIXTEENTH: That the defendant Alvin Sharp is the owner of a primary right to the use, at all times during the irrigation season of $\frac{1}{5}$ th of a cubic foot per second of time of the waters of said Cub River, said right to date from the year 1882, and is also the owner of an additional primary right to the use of $\frac{7}{10}$ ths of one cubic foot per second of time of the waters of said stream, to date from the year A.D. 1892, all of said waters to be used upon and to become appurtenant to the lands owned by claimant, lying within sections 24 and 15 in Township 15 South of Range 40 East of the Boise Meridian, and to be conveyed through the said Merrill, Day and Taylor Ditch and measured at the headgate thereof.

SEVENTEENTH: That the defendants Henry F. Bennett, Merlin Perkins James Perkins and James Keller, Jr., are the owners of a primary right to use, at all times during the irrigation season, of the flow of the waters of said Cub River in the amounts and in the quantities and with the priorities following, that is to say, the said Merlin Perkins and James Perkins to one cubic foot per second of time and the said Henry F. Bennett to $\frac{1}{2}$ cubic foot per second of time and the said James Keller, Jr., to $\frac{3}{4}$ cubic feet per second of time, each of said rights to date from the year A.D. 1884, and the waters hereby allotted to be conveyed through what is known as the Sugar Creek Ditch, and to be measured at the headgate thereof and to be used upon and become appurtenant to the lands owned by them lying within.

The East half of the northwest quarter of section 35, and the West half of the northwest quarter of section 35, the southwest quarter of section 35, and the southeast quarter of section 34, all in township 15 south of Range 40 East of the Boise Meridian, and the North half of the Northwest quarter of section 2, and the northeast quarter of section 3, in township 16 South of range 40 East of the Boise Meridian.

That the defendant Alvin C. Hull administrator of the estate of Robert M. Hull, deceased, is the owner of a primary right to the use, at all times during the irrigation season, of all the waters of Sheep Creek, a tributary of Cub River, arising upon or above his premises described as

A part of the Northwest quarter of the Southeast quarter and the Southeast quarter of the Southeast quarter of section 14, and the Northeast quarter of the Northwest quarter of section 25, in township 15 south of Range 40 East of the Boise Meridian, said right to date from the year A.D. 1890, and the said waters to be used upon and become appurtenant to the lands owned by said claimant above described.

EIGHTEENTH: That the defendant Priscilla Bowman is the owner of a primary right to the use, at all times during the irrigation season, of all of the waters of Sheep Creek, a tributary of Cub River, flowing from and below the lands of said Alvin C. Hull in the paragraph next above described said water to be used upon the lands of the said Priscilla Bowman, lying in Section 24, township 15 south of range 40 East of the Boise Meridian, said right to date from the year A. D. 1890, and the said waters to be appurtenant to the lands of the said Priscilla Bowman, above described.

NINETEENTH: The defendants Alvin C. Hull and Leroy Hull are the owners of a primary right to the use, at all times during the irrigation season, of 2.4 cubic feet per second of time of the waters of the left hand fork of Cub River, to be used upon and become appurtenant to the following described lands:

Beginning at corner No. 1 from which U.S. located monument No. 87 bears 54 degrees west 61 links distant; thence north 7 degrees 12' East 40 and 29/100ths. chains to Corner No. 2; thence North 4 degrees 27' west 36.74 chains to corner No. 3; thence south 4 degrees 33' 37.75 chains to corner No. 5; thence south 81 degrees 22' east 14.38 chains to Corner No. 6; thence south 8 degrees and 4' west 39.91 chains to corner No. 7; thence North 82.46 minutes West 26.85 chains to corner No. 1, the place of beginning.

TWENTIETH: That the defendant, Tracey Loan and Trust Company, a corporation, and S. W. Parkinson, as administrator of the estate of Samuel C. Parkinson, deceased, have, and the said estate has, no right, title or interest in or to the waters or the use of the waters of said Cub River or its tributaries in conflict with the rights of any of the parties appearing herein, the rights of the said estate of Samuel C. Parkinson, deceased, being only to such waters as arise to said stream or accumulate in it, below the point of diversion of the Cub River Irrigation Company, one of the defendants in this action, and that the use of the Cub River by the Franklin County Sugar Company and its conditions as it flows after such use does not prejudice or in any manner injure the said estate; that the claims of the said estate to the waters arising or accumulating in the Cub River below the said point of diversion, are only sufficient for the irrigation of forty acres of land with a priority dating from the year 1888 and with a point of diversion from the mill race of plaintiff extending from the said Cub River to mill located on the land adjacent to the County Road in the City of Franklin.

TWENTY FIRST: That the defendants Cecil Woodward, Garnet Woodward, Franklin Maple Creek Pioneer Irrigation Company, a corporation, Eliza D. Lowe, Elizabeth K. Lowe, Levi Oliverson, John W. Gibson, William Pollett and Howard Gibson, as administrators of the estate William Gibson, deceased, and the said estate of William Gibson, deceased, Wallace Chatterton, S. B. Wright, S. J. Handy, W. Chatterton, Anron Chatterton, Johanna Whitehead, Ivan Woodward, Edward Morgan, Thomas Haworth, W. L. Wicken, Peter C. Whitehead, William Stockdale, and P. A. Robinson, have no right, title or interest in or to the waters or use of the waters of said Cub River, except such right as said defendants may have in and to the waters of Maple Creek, a tributary of said Cub River, which has its confluence with said stream at a point below and the point of diversion, of the defendant, Cub River Irrigation Company from said Cub River, and are junior in time to the appropriations of the said Cub River Irrigation Company, and as to the rights of the said parties in and to the waters of said Maple Creek, no proof has been taken, and no decree is entered herein.

TWENTY SECOND: That the plaintiff Henry T. McEwan is the owner of the right to use, during the non-irrigation season, of each and every year, of 39 cubic feet per second of time of the waters of said Cub River, less the quantity thereof used by the defendant, Franklin County Sugar Company, under its right as herein decreed, for power purposes in the turning of the grist mill of the plaintiff located near said Cub River at all times throughout each and every year, subject nevertheless to the rights of other appropriators herein, as in this decree allotted and defined; said right to date from the year 1887.

In addition to the right of the plaintiff, Henry T. McEwan to the use of the waters of said Cub River, as above specified, during the non-irrigation season, the said Henry T. McEwan is the owner of the right to the use for power purposes in the operation of said grist mill, with priority as of 1887, of all of the waters of Cub River not exceeding 39 cubic feet per second of time, which are not being used for irrigation purposes, or for culinary, domestic and stock watering purposes, or sugar manufacturing purposes as set forth in the twenty third paragraph, following:

TWENTY THIRD: That the defendant Franklin County Sugar Company is the owner of a primary right (subject only to the rights herein defined) to use for all purposes in the operation of its sugar factory at Whitney, Idaho during the campaign season of said sugar factory, so much of the waters of the said Cub River as may be necessary for said purposes, not to exceed 15 cubic feet per second of time of said waters, measured at the point of delivery of the same at said factory. The quantity of the waters of said stream so being used by the said Franklin County Sugar Company to be deducted from the quantity of water herein allotted to the plaintiff, Henry T. McEwan, it is specifically provided, nevertheless, that the right herein allotted to the said Franklin County Sugar Company includes the right in cold weather, when in the judgment of the Sugar Company's water master or Superintendent, the flow of the water to the point of delivery at said defendant's sugar factory will be impeded by freezing, to increase the amount of water to be delivered, to the full amount flowing in Cub River, at the intake of the Cub River Irrigation Company's canal, subject only to the prior rights of the other parties herein, as herein allotted, exclusive of the rights of the plaintiff, Henry T. McEwan.

TWENTY FOUR: That in addition to their rights for irrigation purposes as herein allotted and decreed, the parties to this action are entitled to a primary right as a part of their irrigation appropriation to the use of water for culinary, domestic and stock watering purposes as follows:

* (a) The Cub River Irrigation Company is entitled, during each and every year, to the use, during the non-irrigation season, as defined herein, of 12 C.F.S. of the waters of Cub River for culinary, domestic and stock watering purposes, said right to obtain at any and all times during non-irrigation season when freezing weather does not prevent the flowing of said water in said Company's canals for the uses specified, and when the same is not being used for said purposes, as above specified, the same shall be allowed to flow down Cub River above plaintiff's intake, except that such waters as the defendant City of Preston uses or hereafter may use under the terms of said contract between it and the Cub River Irrigation Company or under any conveyance made pursuant to said contract may be diverted by Irrigation Company or under any conveyance made pursuant to said contract may be diverted by said city of Preston from the Ranger Spring during the whole of each and every year.

(b) The defendant Cub River Middle Ditch Company is entitled to the use of four cubic feet per second of time of the waters of said Cub River or so much thereof as may be necessary for culinary, domestic and stock watering purposes, during the non-irrigation season, of each year, until the freezing weather prevents the same from running through the canal system of said Company, said priority to date from the year A.D. 1882.

(c) That the Cub River and Worm Creek Canal Company, a corporation, is entitled to three (3) second feet of water of Cub River or so much thereof as may be necessary for culinary, domestic and stock watering purposes during the said non-irrigation season until the freezing weather prevents the same from running through the canal system of said Company.

(d) If, during the said non-irrigation season, after the use of the quantity of water hereinabove specified, there shall be sufficient water for that purpose, the quantity of water for the Cub River Middle Ditch Company, a corporation, for culinary, domestic and stock watering purposes, may be increased by an additional two (2) second feet to be used until the freezing weather shall prevent the same from running through the canal system of said company.

(e) If, during the said non-irrigation season, after the use of the quantity of water hereinabove specified, there shall be sufficient water for that purpose, a quantity of water for the Cub River and Worm Creek Irrigation Company, a corporation, for culinary, domestic and stock watering purposes, may be increased by an additional three (3) second feet to be used until the freezing weather prevents the same from running through the canal system of said company.

Done in open court this 9th. day of July, 1924.

Robert M. Terrill
District Judge.

Filed July 9th. 1924

John A. Kofoed
Clerk

STATE OF IDAHO

COUNTY OF FRANKLIN -- SS

I, John A. Kofoed, Clerk of the District Court of the Fifth Judicial District in and for Franklin County, State of Idaho, do hereby certify that the foregoing is a true and correct copy of the Decree in the Case of Henry T. McEwan VS Franklin County Sugar Company et al, found of record in Book "2" of Judgements, at page 383, records of Franklin County, Idaho.

In Witness Whereof, I have herewith set my hand and official seal this 19th day of February, A. D. 1927.

SEAL

Signed ----- John A. Kofoed
Clerk of District Court

*63 sec. ft. of water
allocated during non-irrigation
season.*

DEED.

THIS INSTRUMENT, made this 3rd day of March, A.D. 1927,
between Cub River Irrigation Company, a corporation of the State of
Idaho, hereinafter called the first party, and the City of Preston, a
municipal corporation of Franklin County, Idaho, hereinafter called the
second party, WITNESSETH:

✓ THAT WHEREAS, in an action then pending in the District Court
of the Fifth Judicial District for Franklin County, State of Idaho, where-
in Henry T. McEwen was plaintiff, and Franklin County Sugar Company and
others, including said Cub River Irrigation Company and said Preston
City were defendants, a decree was entered on the 9th day of July, 1924,
by the terms whereof said Cub River Irrigation Company was adjudged to
be the owner of a primary right to the use of 45 cu. ft. per second of
the waters of Cub River with priority as of 1880.

✓ NOW, in consideration of the premises and of the sum of \$1.00
and other good and valuable considerations to it paid by the said second
party, the first party does hereby bargain, sell, transfer, and convey
to the second party a 1/18 part of all water, to the use of which it shall
be entitled under its primary right, pursuant to the provisions of the
said decree.

This conveyance is made subject to the provision that in the
event the flow of said Cub River shall be such that under the terms of
said decree the said first party shall not be entitled to receive 45 cu.
ft. per second of the waters thereof, then said second party shall re-
ceive only 1/18 part of whatever waters of said stream the said first
party shall be entitled to under its primary right, as provided in said
mentioned decree, and subject to the further provision that said Preston
City shall divert said waters from the Rangers Spring, one of the tribu-
taries of said Cub River, and shall at no time divert from said Rangers
Spring an amount of water in excess of 2 1/2 cu. ft. per second, and subject
to the further provision and condition that the second party shall at all
times maintain, at its own cost, in good repair, an adequate and suitable

measuring device for the measuring of the said waters, and keep the same under lock and key, and that the first party shall have a key thereto, and shall at all times have right of access for the purpose of determining the sufficiency of the said measuring device and the quantity of water being diverted by the said second party.

IN WITNESS WHEREOF, the said Cub River Irrigation Company has caused these presents to be signed by its corporate officers thereunto duly authorized this 1st day of March 1927, and has caused its corporate seal to be thereto affixed.

Cub River Irrigation Company
LEWISTON BEAR LAKE IRRIGATION COMPANY
BY G. C. Hansen PRESIDENT
Geo. F. Rawlins SECRETARY

STATE OF IDAHO,
COUNTY OF FRANKLIN.) ss.

On this 3rd day of January, 1927, before me, Arthur J. Mark
a Notary Public in and for said county and state, personally appeared
G. C. Hansen and Geo. F. Rawlins the President
and Secretary respectively of the Cub River Irrigation Company, the corporation that executed the foregoing instrument and acknowledged to me that said corporation executed the same.

Arthur J. Mark
NOTARY PUBLIC,
Residing at:

My commission expires:
March 1, 1928

Preston J. J. J.

BIRCH SPRINGS WATER MEASUREMENTS

DATE	INCHES	CFS	DATE	INCHES	CFS
1-27-84	4 1/6	1.64	7-12-84	7.0	2.975
2-3-84	4 3/4	1.64	7-27-84	5 3/4"	2.239
2-10-84	4 7/8	1.70	7-6-84	5 3/4	2.239
2-14-84	4 3/4	1.64	8-15-84	5 1/4	2.033
2-21-84	5	1.83	8-22-84	5.0	1.833
3-27-84	7 1/4	3.13	8-28-84	5.0	1.833
4-4-84	10	5.09	9-4-84	5.0	1.833
4-11-84	11	5.94	9-11-84	4 1/2	1.577
4-17-84	12 +	6.73 +	9-20-84	4 1/4	1.455
4-24-84	12 +	6.73 +	10-8-84	4 3/4	1.768
5-1-84	12 +	6.73 +	10-22-84	4 1/4	1.455
5-9-84	12 +	6.73 +	11-5-84	4 1/4	1.455
5-16-84	12 +	6.73 +	11-15-84	4 7/8	1.768
5-22-84	12 +	6.73 +	11-26-84	5 1/4	2.033
5-31-84	9 1/2	4.728	12-10-84	5 1/2	2.170
6-5-84	8 1/2	4.909	12-19-84	5 3/4	2.239
6-14-84	8.0	3.693	12-31-84	6.0	2.381
6-19-84	7 3/4	3.448	1-4-85	5 3/4	2.239
6-29-84	7 1/4	3.130			
7-6-84	7.0	2.975			

985 BIRCH SPRINGS WATER MEASURE

DATE	INCHES	CFS	DATE	INCHES	CFS
1-14-85	5 ³ / ₄	2.239	7-30-85	^{.344} 4 ¹ / ₈	1.36
2-4-85	5 ³ / ₄	2.239	8-8-85	4 ¹ / ₈	1.36
2-25-85	5 ⁵ / ₈	2.170	8-13-85	^{.333} 4.0	1.28
3-15-85	7 ¹ / ₂	3.327	8-23-85	4.0	1.28
3-27-85	10 ¹ / ₄	5.315	8-29-85	3 ³ / ₄	1.16
4-5-85	12 +	6.73 +	9-6-85	3 ³ / ₄	1.16
4-18-85	12 +	6.73 +	9-20-85	3 ³ / ₄	1.16
4-25-85	^{.7917} 9 ¹ / ₂	4.723	9-27-85	3 ³ / ₄	1.16
5-2-85	^{.6667} 8.0	3.693	10-11-85	3 ³ / ₄	1.16
5-13-85	^{.5521} 6 ⁵ / ₈	2.747	11-1-85	4.0	1.28
5-17-85	^{.54} 6 ¹ / ₂	2.672			
5-30-85	^{.479} 5 ³ / ₄	2.239			
6-7-85	^{.458} 5 ¹ / ₂	2.101			
6-15-85	^{.4375} 5 ¹ / ₄	1.965			
6-27-85	^{.406} 4 ⁷ / ₈	1.768			
7-5-85	^{.354} 4 ¹ / ₄	1.42			
7-12-85	^{.344} 4 ¹ / ₈	1.36			
7-17-85	^{.344} 4 ¹ / ₈	1.36			

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

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*J.D. Williams would like a copy of
application 13-0027 & 13-0028
plus the "Listing of Water Rights"
report prepared by Clyde Nelson.*

Sent 2/29/88

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licable to

(1) A decree entered by the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Oneida, under Case No. 7480, Cub River Irrigation Co. vs. Cub River Middle Ditch Co, Defendant, and Franklin Cub River Canal Company and Cub River and Worm Creek Canal Company, et al, Intervenor County in which the City of Preston and its environs (located at the time of the decree), said decree, January 26, 1906. Pursuant to paragraph 1 of the decree, the plaintiff, Cub River, was granted the right to use at a rate of 45/100th of the water of Cub River. A copy of said decree is attached to this memorandum as

(2) Irrigation Company et al, Intervenor, said spring of Preston. Said agreement was also made of said river so that if the flow of the river was less than the full 45 second feet, then the City of Preston would be reduced accordingly to its 1/18th share thereof.

BEFORE THE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO

IN THE MATTER OF THE)
APPLICATIONS FOR TRANSFER)
#13-0026, 13-0027, and) LISTING OF CITY OF
13-0028 in the name of) PRESTON WATER RIGHTS
CITY OF PRESTON, IDAHO)

COMES NOW, Clyde G. Nelson, Attorney for the City of Preston, Idaho, and hereby sets forth the water rights possessed by the City of Preston, Idaho as are applicable to the applications listed below.

I. 13-0026

A. Decreed Water Rights

(1) A decree entered by the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Oneida, under Case No. 7480, Cub River Irrigation Co. vs. Cub River Middle Ditch Co, Defendant, and Franklin Cub River Canal Company and Cub River and Worm Creek Canal Company, et al, Intervenors (the county in which the City of Preston and its environs were located at the time of the decree), said decree being dated January 26, 1906. Pursuant to paragraph Second of said decree, the plaintiff, Cub River Irrigation Company, was granted the right to use at all times 45 cfs of all of the water of Cub River and 45/100th excess of high water of the river. A copy of said decree is attached hereto and made a part of this memorandum as Exhibit "1".

(2) The City of Preston and Cub River Irrigation Company entered into an agreement dated February 27, 1920, a copy of which is attached hereto as Exhibit "2". Pursuant to that agreement, the City of Preston was granted by Cub River Irrigation Company the right to use at all times 1/18th of the waters to which Cub River Irrigation Company was entitled. This grant entitled the City of Preston to 2.5 cfs of water. Said water was to be originally measured at Ranger Spring or between said spring and Cub River at the option of the City of Preston. Said agreement was also made subject to fluctuations in the flow of said river so that if the flow of the river was less than the full 45 second feet, then the City of Preston would be reduced accordingly to its 1/18th share thereof.

(3) On July 9, 1924, a decision was rendered in the District Court of the Fifth Judicial District of the State of Idaho, in and for Franklin County, in the case of Henry T. McEwan vs. Franklin County Sugar Company, et al. Cub River Irrigation Company, the predecessors to Preston-Whitney Irrigation Company, and the City of Preston, Idaho, were defendants in that action. A copy of said decree is attached hereto and made part of this memorandum as Exhibit "3". Paragraph Third of that decree awards Cub River Irrigation Company as its primary right 45 cfs of the waters of Cub River and 45/100th of the excess of high water rights of said river. Paragraph Eighth of the decree refers to a contract between Cub River Irrigation Company and the City of Preston, Idaho, and stated that the City would have the right to use from Ranger Spring, during the whole of each and every year, such quantity of the waters of Cub River as may be conveyed to it by said Cub River Irrigation Company, pursuant to said contract, not exceeding at any time 2 1/2 cfs. (Note that other rights are granted to the City of Preston pursuant to said paragraph Eighth. Also, Ranger Spring is a tributary of Cub River.) Paragraph 24(a) of said decree also gives to the Cub River Irrigation Company as its primary right during non-irrigation season 12 cfs of the waters of Cub River for culinary, domestic and stock watering purposes. Paragraph 24(a) allows the City of Preston, Idaho, to take such water as it uses or could use under the terms of the agreement between it and Cub River Irrigation Company from Ranger Spring during the whole of each and every year.

(4) A deed was executed by Cub River Irrigation Company to the City of Preston on March 3, 1927. A copy of that deed is attached hereto and a made a part of this memorandum as Exhibit "4". The second paragraph of the decree refers to the fact that the Cub River Irrigation Company was adjudged to be the owner of a primary right to the use of 45 cfs of the waters of Cub River. Paragraph 3 of that deed grants the City of Preston 1/18th of all water to which Cub River was entitled under its primary right. Paragraph 4 of the decree states that the City of Preston shall get 1/18th of the waters which the Cub River Irrigation Company is entitled under its primary right, and that the City of Preston could not divert from Ranger Spring, a tributary of Cub River, an amount of water in excess of 2.5 cfs.

(5) CONCLUSION: The City of Preston is entitled to 2.5 cfs of water from Cub River during the entire year. The 1906 decree grants Cub River Irrigation Company 45 cfs for the entire year. The agreement of 1920, which is based on the 1906 decree, grants to the City of Preston 1/18th of all waters to which Cub River was entitled to under the 1906

decree. $1/18$ th of 45 equals 2.5 cfs. The subsequent decree of 1924 does not change that agreement. Under paragraph Eighth of that decree, the City of Preston is given whatever amount of water was agreed upon between Cub River Irrigation Company and the City of Preston pursuant to the agreement. That agreement had already been completed giving the City 2.5 cfs. Paragraph Eighth also refers to the fact that the City of Preston is entitled up to 2.5 cfs. Although Paragraph 24 of the 1924 decree limits Cub River Irrigation Company to 12 cfs of water during the non-irrigation season for culinary, domestic and stock watering purposes, Cub River Irrigation Company is bound by its agreement with the City of Preston allowing it 2.5 cfs. This does not infringe on other water users from the Cub River as Cub River Irrigation Company is allotted 12 cfs, and the granting of 2.5 cfs during the non-irrigation season to the City of Preston does not adversely affect other water users.

Furthermore, Cub River Irrigation Company does not use its culinary water during the non-irrigation season, and the City of Preston has used the same for more than 50 years by means of its culinary pipe line diverted from Berquist Springs. Consequently, the City of Preston has appropriated and used the waters to which Cub River Irrigation Company lay claim, but which the company has lost due to its lack of appropriation and beneficial use.

It seems only logical that the City Fathers and the officers of the canal company knew that the City would require a constant water flow for the entire year for culinary and municipal uses. They would not have negotiated an agreement which would have cut the water available to the City to one-fourth during the winter months. For this reason they did not limit the amount of water the City could take and referred to the fact that the City could have the same "all year".

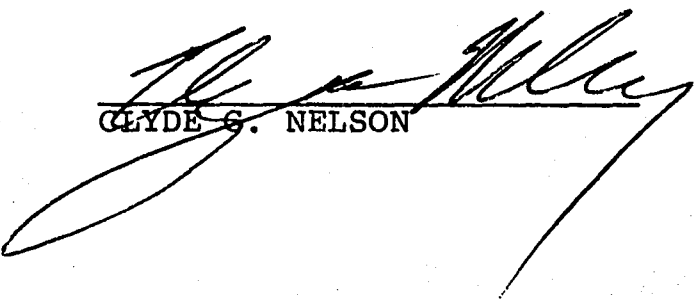
The City is also entitled, pursuant to this agreement, of $1/18$ th of Cub River's primary right during the irrigation season of $1/18$ th of $45/100$ th of the excess water of the stream.

B. Stock Rights

(1) The City of Preston owns shares of stock in the Cub River Irrigation Company. The Cub River Irrigation Company applied for a transfer of the point of diversion and the place of use of said water rights of 2.82 cfs and noted that the same were to be delivered to the city for municipal use. Since the date of the application, the City of Preston has acquired additional stock in the company, and the amount of water to which it is entitled

water from Birch Springs during certain months of the year. In any case, the City of Preston does have a measuring device at Birch Springs and at Berquist Springs. Since the City is only entitled to whatever water Birch Springs produces, it is also entitled to the same amount of water from Berquist Springs. This is based upon the historical useage of water from Berquist Springs and the failure of the companies to protest the use from Berquist Springs. Copies of the Birch Springs water measurements for the years 1984 and 1985 are attached hereto as Exhibit "5".

RESPECTFULLY SUBMITTED.



CLYDE G. NELSON

through its ownership of shares in the company equals 3.27 cfs of water. While the City of Preston does not object to the transfer of said water, it is noted that the City will be filing a subsequent application for transfer of the water right to indicate that its right to use water under its stock rights is for the entire year rather than the irrigation season to which the canal company has limited its application. As a shareholder in the company, the City is entitled to its proportionate share of the water during the non-irrigation season. Furthermore, as the company fails to make use of its water rights during those months, and the City of Preston has historically made use of those for a period of 50 years, the City is entitled to divert and appropriate at least 3.27 cfs of water during the entire year. Either the City has this right as a shareholder in the company to make use of water to which the company is entitled and not used by other members of the company, or it is entitled to said water on an historical appropriation basis.

II. 13-0027 - Ranger Spring

Pursuant to Paragraph Eighth of the decree of 1924, a copy of which has been attached hereto, the City is entitled to 1 cfs of water for municipal purposes from Cub River to be diverted from Ranger Spring. That water has historically been diverted from Berquist Springs and used in the City culinary system at least 50 years. The only protest filed to said application refers to the fact that a measuring device had not been installed on the culinary water line at Berquist Springs. That measuring device has now been installed.

III. 13-0028 - Birch Spring

A. Paragraph Eighth of the decree of 1924 allows the City of Preston, Idaho, to divert at all times all of the waters from Birch Springs for municipal purposes. That water has historically been used from Berquist Springs through the City's culinary pipe line. Said water has been used by the City of Preston, as has water under the Ranger Spring right, from Berquist Springs in excess of 50 years.

The protests to this application merely state that no adequate measuring device has been installed at Berquist Springs and that the companies believe that the City has overestimated the minimum flow of Birch Springs. A measuring device has been installed at Berquist Springs. A measuring device has also been installed at Birch Springs which measurements show a minimum flow of 1.455 cfs of water in 1984 and a minimum flow of 1.16 cfs of water in 1985. The measurements also show readings in excess of 6.73 cfs of

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

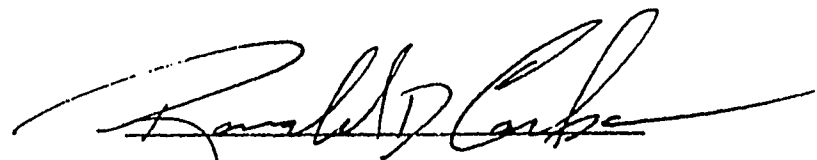
IN THE MATTER OF APPLICATION FOR
TRANSFER NO. 13-0027 IN THE
NAME OF CITY OF PRESTON

)
) NOTICE OF HEARING
) &/OR CONFERENCE
)

On September 19, 1983, the City of Preston filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. On January 3, 1984, the Department received protests against approval of said application from Preston Whitney Irrigation Company and Cub River River Irrigation Company.

The Department has set the matter of protests for conference and/or hearing for 11:00 a.m., Wednesday, March 16, 1988, in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 29th day of February, 1988.



RONALD D. CARLSON
Eastern Regional Manager

Transfer No. 2974
Water Right No. 13-0027STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use**APPROVED**Name of applicant City of Preston, Idaho Phone 852-1817
Post Office address City Hall Preston, ID. 83263

A. DESCRIPTION OF RIGHT AS RECORDED

1. Right evidenced by:

- a. Decree No. 13-0027 Decreed to City of Preston, Idaho
(Name)
in case of Henry T. McEwain vs Franklin Sugar Co.
dated in July 9, 1924 in 5th Judicial Dist. county of Franklin
(Name of court)
- b. License No. _____ issued by the Idaho Department of Water Resources
- c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant _____

3. Source of water Ranger Springs tributary to Cub River4. Date of priority 1879

5. Water is used for the following purposes:

amount 1 cfs for municipal purposes from January 1 to December 31
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. one cubic feet per second
&/or
b. _____ acre feet per annum7. Location of original point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 4
Township 15 S Range 41 East, B.M., in Franklin CountyAdditional points of diversion, if any Also located in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3
T15 S., R 41 E., B.M., also known as Ranger Springs

8. Lands irrigated or place of use: * Place of use is within city limits of Preston, Idaho and with contractees of City.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
*																			

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above 13-0028
13-002610. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B).

1. Amount of water: a. one cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 4 Township 15 S.
Range 41 East, B.M., Franklin County
Additional points SW 1/4 SW 1/4, Section 3, Township 15 South, Range
41 East, B.M. Also known as Ranger Spring
3. Place of use: * Place of use is within the city limits of Preston, Idaho and with contractees of the city.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
*																			

Total number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information

- a. Amount of water to be diverted one c.f.s. &/or _____ acre feet
- b. Description of diverting works headgate and city pipeline at Bergquist Springs
- c. Describe the reasons for the proposed changes Changes in point of diversion from Ranger Springs to Bergquist Springs (tributary to Cub River) to facilitate delivery of water to City of Preston for culinary and municipal use.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10 Township 15 S
Range 41 E., B.M., Franklin County
Additional points NW 1/4 NW 1/4, Sec. 11, T.15 S., Range 41 East,
Franklin County

3. Change in place of use

- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water right which limit your authority to make the proposed change? Yes _____ No X. If yes, provide a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
None

c. Describe the land or place of use to which the right will be ~~used~~ used:

* To be used within City Limits of Preston, Idaho and with Contractors of City

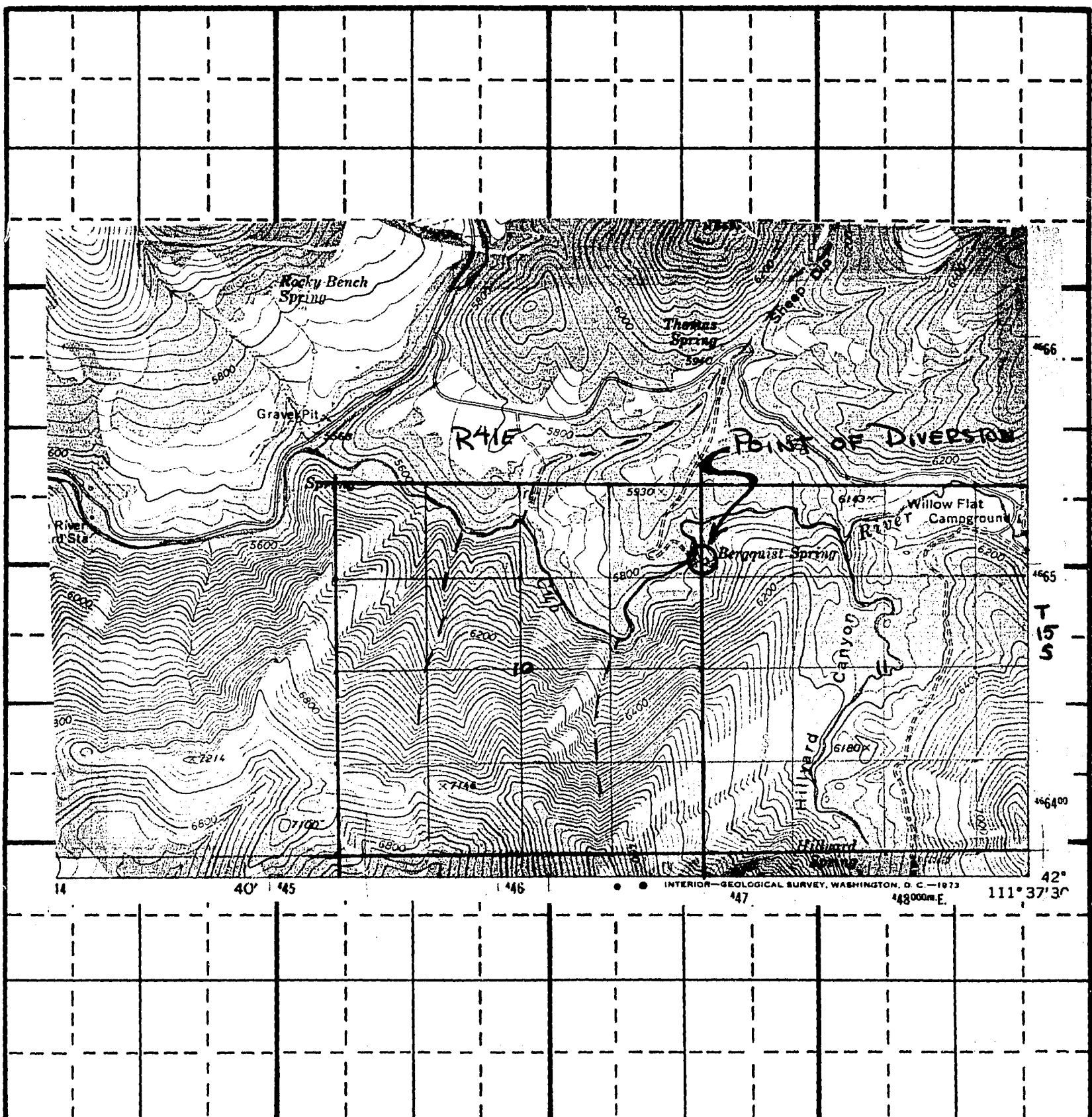
TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
*																			

Total number of acres to be irrigated _____

4. Describe any other water rights used for the same purpose as described above. _____

13-0026; 13-0028

5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

D. REMARKS

1. Water has been diverted pursuant to this right from Bergquist Springs for approximately 50 years through Preston City Water lines.

2. (A.7.) Ranger Springs located in SE 1/4 SE 1/4, Sec. 4, T. 15S., R. 41 E., B.M. and SW 1/4 SW 1/4, Sec. 3., T. 15S., R. 41E., B.M. Franklin County, Idaho.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

Reed Bunchley
(Signature of Applicant)

Subscribed and sworn to before me this 22 day of November, 19 83

Nanette Cochran
(Notary Public)

My commission expires lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. 13-0027

and said application is hereby APPROVED, subject to the following limitations and conditions:

1. A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

2. Use of water under this water right is subject to control by the watermaster of State Water District No. 13-A, Cub River.

Witness my hand this 12th day of September, 19 91

J. Glen Saylor
Chief, Water Allocation Bureau

FOR DEPARTMENT USE ONLY

Received by CW Date 9-19-83 Protest filed by Cub River Irrigation
Prelim. check by Kew Fee ~~14-30-83~~ 50.00 Preston Whitney Irrig
Receipted by BP Date 9-19-83 #29680
Published in Preston Citizen Copies of protest forwarded by CW
Pub. dates 12/15 + 12/22/83 Hearing held by _____ Date _____
Watermaster recom. andation requested on 1-12-83 Recommended for approval denial
WD 13-A rec'd. 1-03-84 by Rpc

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

Name of applicant City of Preston, Idaho Phone 852-1817
Post Office address City Hall Preston, ID. 83263

A. DESCRIPTION OF RIGHT AS RECORDED**1. Right evidenced by:**

a. Decree No. 13-0027 Decreed to City of Preston, Idaho
(Name)
in case of Henry T. McEwain vs Franklin Sugar Co.
dated in July 9, 1924 in 5th Judicial Dist. county of Franklin
(Name of court)

b. License No. _____ issued by the Idaho Department of Water Resources

c. Claim No. _____ on file with the Idaho Department of Water Resources

2. If applicant is not the original holder of this right, explain how it was acquired and attach a copy of the deed or other evidence of ownership of the land to which the right is appurtenant

3. Source of water Ranger Springs tributary to Cub River

4. Date of priority 1879

5. Water is used for the following purposes:

amount 1 cfs for municipal purposes from January 1 to December 31
amount _____ for _____ purposes from _____ to _____
amount _____ for _____ purposes from _____ to _____
(month/day — both dates inclusive)

6. Total amount of water under right: a. one cubic feet per second
&/or
b. _____ acre feet per annum

7. Location of original point of diversion is SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 4
Township 15 S Range 41 East, B.M., in Franklin County

Additional points of diversion, if any Also located in SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3
T15 S., R 41 E., B.M., also known as Ranger Springs

8. Lands irrigated or place of use: * Place of use is within city limits of Preston, Idaho and with contractees of City.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
*																			

Total number of acres to be irrigated _____

9. Describe any other water rights used for the same purpose as described above 13-0028
13-0026

10. To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of nonuse? No If yes, describe in item D, REMARKS.

B. DESCRIPTION OF PORTION OF RIGHT OWNED BY APPLICANT (If the entire right is owned by the applicant, omit part B):

1. Amount of water: a. one cubic feet per second
&/or
b. _____ acre feet per annum
2. Point of diversion SE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 4 Township 15 S.
Range 41 East, B.M., Franklin County
Additional points SW $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, Township 15 South, Range
41 East, B.M. Also known as Ranger Spring
3. Place of use: * Place of use is within the city limits of Preston,
Idaho and with contractees of the city.

TWP.	RANGE	SEC.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				TOTALS
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
*																			

Total number of acres to be irrigated _____

C. DESCRIPTION OF RIGHT OR PORTION THEREOF, AFTER THE REQUESTED CHANGE

1. General Information

- a. Amount of water to be diverted one c.f.s. &/or _____ acre feet
- b. Description of diverting works headgate and city pipeline at Bergquist
Springs
- c. Describe the reasons for the proposed changes Changes in point of diversion
from Ranger Springs to Bergquist Springs (tributary to Cub River)
to facilitate delivery of water to City of Preston for
culinary and municipal use.

2. Change in point of diversion

Point of diversion NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 10 Township 15 S
Range 41 E., B.M., Franklin County
Additional points NW $\frac{1}{4}$ NW $\frac{1}{4}$, Sec. 11, T.15 S., Range 41 East,
Franklin County

3. Change in place of use

- a. Are there liens, mortgages, or contracts on the lands from which you propose to transfer the water
right which limit your authority to make the proposed change? Yes _____ No X If yes, provide
a statement agreeing to the proposed change from the holder of the lien, mortgage or contract.
- b. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer
None

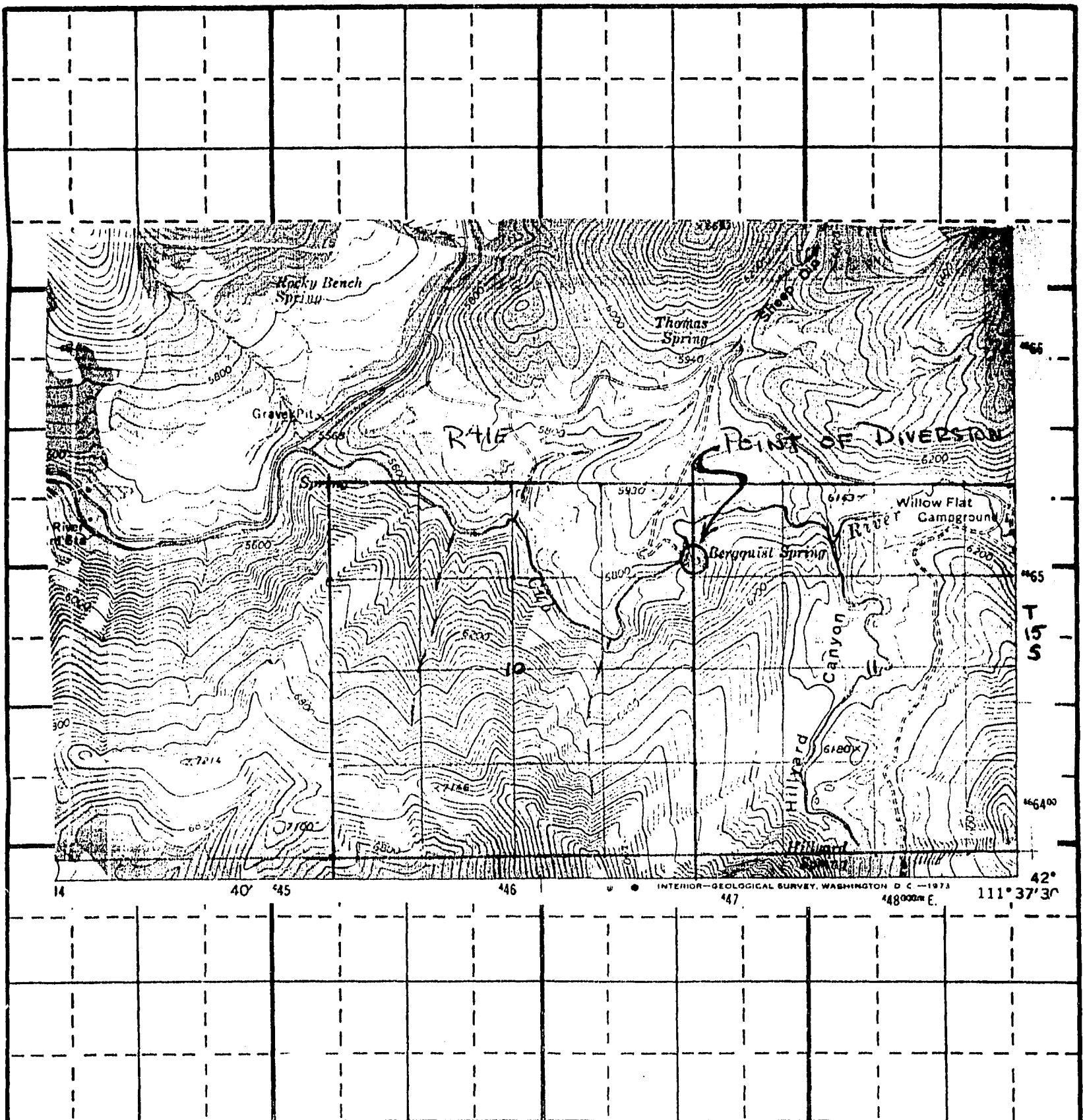
c. Describe the land and place of use to which the right will be reserved:

** To be used within City limits of Preston, Idaho and with Contractors of City

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
*																			

Total number of acres to be irrigated _____

4. Describe any other water rights used for the same purpose as described above. _____
13-0026; 13-0028
5. Draw a map indicating the new point(s) of diversion and/or the new land to be irrigated. Show clearly the land involved by section, township and range number.



SCALE: 2 inches equal 1 mile. Draw plan in ink.

D. REMARKS

1. Water has been diverted pursuant to this right from Bergquist Springs for approximately 50 years through Preston City Water lines.
2. (A.7.) Ranger Springs located in SE 1/4 SE 1/4, Sec. 4, T. 15S., R. 41 E., B.M. and SW 1/4 SW 1/4, Sec. 3., T. 15S., R. 41E., B.M. Franklin County, Idaho.

I hereby assert that no one will be injured by such change and that the change does not constitute an enlargement in use of the original right. The information contained in this application is true to the best of my knowledge.

I understand that any willfull misrepresentations made in this application may result in voiding its approval.

Reed Burchley
(Signature of Applicant)

Subscribed and sworn to before me this 22 day of November, 19 83.

Nanette Cohen
(Notary Public)

My commission expires lifetime

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____ and said application is hereby _____, subject to the following limitations and conditions:

Witness my hand this _____ day of _____, 19 _____.

FOR DEPARTMENT USE ONLY

Received by <u>CW</u>	Date <u>9-19-83</u>	Protest filed by _____
Prelim. check by <u>Kew</u>	Fee <u>~~4-30-83~~ 50.00</u>	
Receipted by <u>BP</u>	Date <u>9-14-83</u> # <u>29650</u>	
Published in <u>P</u>		Copies of protest forwarded by _____
Pub. dates _____		Hearing held by _____ Date _____
Watermaster recommendation requested on _____		Recommended for approval _____ denial _____
_____ rec'd. _____		by _____

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE

STATE OF IDAHO

IN THE MATTER OF THE APPLICATION	}	
OF THE CITY OF PRESTON, APPLICA-	}	PROTEST OF PRESTON WHITNEY
TION NO. 13-0027 TO CHANGE	}	IRRIGATION COMPANY
THE POINT OF DIVERSION OF RANGER	}	Application No. 13-0027
SPRING ON CUB RIVER.	}	To Change Point of Diversion

COMES NOW, the PRESTON WHITNEY IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Angus Condie, Preston, Idaho; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0027, of Preston City to change the point of diversion of Ranger Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho.
2. That the PRESTON WHITNEY IRRIGATION COMPANY is the owner and successor in interest to decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.
3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs.

DATED This 30th day of December, 1983.

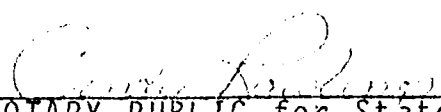
PRESTON WHITNEY IRRIGATION COMPANY

By Blaine Gamble
BLAINE GAMBLE, President

STATE OF IDAHO }
County of Franklin }

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared BLAINE GAMBLE, known to me to be the President of the corporation that exeucted the foregoing instrument, an acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF THE APPLICATION	)	
OF THE CITY OF PRESTON, APPLICA-	)	PROTEST OF CUB RIVER
TION NO. 13-0027 TO CHANGE	)	IRRIGATION COMPANY
THE POINT OF DIVERSION OF RANGER	)	Application No. 13-0027
SPRING ON CUB RIVER.	)	To Change Point of Diversion

COMES NOW, the CUB RIVER IRRIGATION COMPANY, a Corporation organized and existing under the laws of the State of Idaho, and whose address is Lewiston, Utah; that pursuant to the provisions of Idaho law, and any and all other pertinent statutes and rules of the Department it does hereby protest the granting of an application no. 13-0027, of Preston City to change the point of diversion of Ranger Springs on Cub River to Berquist Springs. As reasons and grounds for such protest it admits and alleges as follows:

1. That protestant is an irrigation company organized for the purpose of distributing its irrigation waters to its members for the purpose of irrigating land in Franklin County, Idaho, and Cache County, Utah, and has been so engaged for more than 104 years last past.

2. That the CUB RIVER IRRIGATION COMPANY is the owner of a decreed water rights in Cub River as provided in the Decree issued by the Fifth Judicial District in the case of McEwan vs. Franklin County Sugar Company, et al dated July 9, 1924.

3. That the said company protests the application to change the point of diversion filed by Preston City for the reasons that the City has not yet installed an adequate measuring device on its culinary water line at Berquist Springs.

DATED This 30th day of December, 1983.

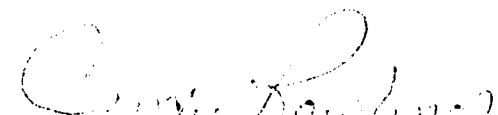
CUB RIVER IRRIGATION COMPANY

By Regan Wheeler
REGAN WHEELER, President

STATE OF IDAHO)
County of Franklin)

On this 30th day of December, 1983, before me, the undersigned, a Notary Public in and for said State, personally appeared REGAN WHEELER, known to me to be the President of the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



NOTARY PUBLIC for State of Idaho
Residing at Preston, Idaho

January 11, 1984

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0027 ✓ "

Angus Condie
Preston Whitney Irrigation District
Preston, ID 83263

Dear Mr. Condie:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office
Williams & Castleton, Attornies

January 11, 1984

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0027 ✓ "

Regan Wheeler, President
Cub River Irrigation Company
Lewiston,
Utah 84320

Gentlemen:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office

January 11, 1984

RE: Application for Transfer No. 13-0027 and 13-0028

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

Enclosed please find a copy of the protest filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing. Legal counsel is not mandatory at an proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

Enclosure

cc: IDWR - State Office

NOTICE OF PROPOSED CHANGE OF WATER RIGHT

NO. 13-0027

Notice is hereby given that the City of Preston, Idaho, has applied to the Dept. of Water Resources for a change in the point of diversion and source of the waters of Ranger Springs tributary to Cub River. The right sought to be changed is evidenced by Decree No. 13-0027 to City of Preston, Idaho in case of Henry T. McEwain vs. Franklin Sugar Co. dated in July 9, 1924 in Fifth Judicial District Court, Franklin County and is recorded as follows:

AMOUNT: 1.00 cfs PRIORITY: 1879

POINT OF DIVERSION: SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 4, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 3
T. 15S, R. 41E, B.M. Franklin
County.

The water is used for municipal purposes within the city limits of Preston, Idaho.

TO BE CHANGED AS FOLLOWS

The water will be diverted within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 10, NW $\frac{1}{4}$ NW $\frac{1}{4}$ Sec. 11, T. 15S, R. 41E, B.M. Franklin County and the source will be changed from Ranger Springs to Bergquist Springs tributary to Cub River.

Any protests against the above proposed change of water right must be filed with the Dept. of Water Resources 150 Shoup Ave., Suite 15, Idaho Falls, Idaho, 83401, on or before January 3, 1983.

A. KENNETH DUNN

Director

Published in the Preston Citizen on 12/15 & 12/22/83.

*Proofed
BP 12/13/83*

December 12, 1983

RE: Applications for Transfer 13-0027 & 13-0028
CITY OF PRESTON

Conan Foster, Watermaster
Water District No. 13-A
Rt. 3
Preston, ID 83263

Dear Mr. Foster:

Please find enclosed a copy of the above referenced applications and watermaster recommendation forms. Please review the applications and complete the forms, returning them to this office on or before January 3, 1983.

Thank you for your cooperation in this matter.

Sincerely,

BARBARA L. POWERS
Secretary

Enclosures



John V. Evans
Governor

A. Kenneth Dunn
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
EASTERN REGION

150 Shoup — Suite 15
Idaho Falls, Idaho 83402
(208) 525-7161

January 4, 1984

RE: Application for Transfer No. 13-0027 CITY OF PRESTON
13-0028 "

Preston Citizen
P.O. Box 472
Preston, ID 83263

Gentlemen:

Would you please submit an affidavit of publication and certified bill in connection with the above referenced application(s). The legal notice was to have been published in your paper on December 15 and 22, 1983.

Your cooperation in this matter is greatly appreciated.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

APPLICATION FOR TRANSFER OF WATER RIGHT

NO. 13-0027

RECOMMENDATION OF WATERMASTER

Department of Water Resources
Eastern District Office

I, CONAN FOSTER, watermaster of the Cub River Water,
District _____, County of Franklin, State of Idaho,
whose address is Preston, Idaho
have read the attached copy of the application for transfer of water right for Preston
City, and to the best of my knowledge believe the
(name)
application to be true.

A. I hereby endorse the above numbered Application for Transfer and recommend
that the Director of the Department of Water Resources approve the transfer subject to
the following conditions: _____

OR

B. I do not endorse approval of the above numbered Application for Transfer as re-
quested for the following reasons: The City has not installed a measuring
device on the culinary water line at Berquist Springs to adequately
supervise this diversion.

Dated at Preston, Idaho, this 29th day of December 1983.

Conan Foster
(signature)

Please use reverse side if needed.

January 11, 1984

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0027 "

Regan Wheeler, President
Cub River Irrigation Company
Lewiston,
Utah 84320

Gentlemen:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office

January 11, 1984

RE: Application for Transfer No. 13-0028 CITY OF PRESTON
13-0027 "

Angus Condie
Preston Whitney Irrigation District
Preston, ID 83263

Dear Mr. Condie:

This is to acknowledge receipt of the protest filed against the above referenced application for transfer. The following are the principle items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

cc: IDWR - State Office
Williams & Castleton, Attornies

January 11, 1984

RE: Application for Transfer No. 13-0027 and 13-0028

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

Enclosed please find a copy of the protest filed against the above referenced application. You should be aware that the following are the items we can consider at a conference and/or hearing in either approving or denying an application for transfer:

1. Are other water rights injured by the transfer?
2. Does the change constitute an enlargement in the use of the original right?
3. Will the proposed use under this transfer conflict with the local public interest?

You will be notified at a later date as to the time and place set for conference and/or hearing. Legal counsel is not mandatory at an proceeding before the Department, although you may desire to employ an attorney in your behalf.

If we may be of further assistance, please contact us.

Very truly yours,

RONALD D. CARLSON
Eastern Regional Supervisor

RDC:cw

Enclosure

cc: IDWR - State Office

CONVERSATION MEMORANDUM

DATE Feb. 21, 1984

FILE City of Preston Transfer

NAME OF PARTY Clyde Nelson, Atty.

EMPLOYEE Ernest Carlsen *Emc*

RE: Applications for Transfer No.'s 13-0026/13-0027/13-0028

Mr. Nelson was contacted by telephone this afternoon to determine if he would be available for water right hearings during the first week of March, 1984. He indicated he would not be available for hearings at that time and that it may be better to postpone these hearings until a fourth application for transfer has been processed. This application is being prepared and he suspects will be submitted in the near future.

Since all four applications are related to the operation of Preston's municipal system for power generation and for supplying water to the city, its logical to delay scheduling a hearing until we can consider all four applications at the same time.

Mr. Nelson asked that these hearings be set as soon as possible after the fourth application has been processed. I indicated that if processing of the application proceeded smoothly, we might be able to schedule the hearing for April.

July 19, 1985

Mayor J. D. Williams
City of Preston
70 West Oneida
Preston, ID 83263

Your Honorable Mayor:

In January 1984 the City of Preston submitted an application for transfer for part of water right #13-0026 decreed to Cub River Irrigation Co. Apparently the application was filed to record the City's practice of diverting its entitlement from Bergquist Spring.

Review of the application by Department staff revealed it was not in form to advertise so a revised application was prepared and sent to Clyde Nelson. We have tried on several occasions to find out the status of this application and still do not know why it was not returned.

In addition to that application we are also holding two other applications by the city involving the transfer of rights 13-0027 and 13-0028. Both these applications also identify Bergquist Spring as the new point of diversion. They have been advertised and both were protested. However administrative consideration of the protests was being postponed until all three applications could be considered.

The Department does have an obligation to proceed with processing in a diligent manner. We are reluctant therefore, to continue the postponement unless advised that some aspect of the proposed change is involved in litigation or that the revised application on 13-0026 will be returned for processing. If it is not returned

Honorable Mayor Williams
July 19, 1985
Page 2

by August 5, 1985 the original application will be sent back to you and a refund request will be forwarded to the State Auditor's office for returning the \$50.00 filing fee. Transfer applications on rights 13-0027 and 13-0028 will then be considered for the next hearing schedule to cover the Preston area.

Please feel free to contact me if you have questions concerning the revised application on right 13-0026.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EMC/ct

cc: Clyde Nelson

September 27, 1985

RE: Application for Transfer Nos. 13-0027 & 13-0028
CITY OF PRESTON

Mr. Angus Condie
Preston-Whitney Irrigation District
Preston, ID 83263

Gentlemen:

To recommend final action on the above captioned applications a conference and/or administrative hearing must be held to examine the issues of protest against granting the transfers. October 29, 1985 has initially been selected as the date for conducting this meeting which will be held in Preston.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Williams & Castleton

September 27, 1985

RE: Application for Transfer Nos. 13-0027 & 13-0028
CITY OF PRESTON

Mr. Regan Wheeler, President
Cub River Irrigation Company
Lewiston, UT 84320

Gentlemen:

To recommend final action on the above captioned applications a conference and/or administrative hearing must be held to examine the issues of protest against granting the transfers. October 29, 1985 has initially been selected as the date for conducting this meeting which will be held in Preston.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Williams & Castleton

September 27, 1985

RE: Application for Transfer Nos. 13-0027 & 13-0028

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

To recommend final action on the above captioned applications a conference and/or administrative hearing must be held to examine the issues of protest against granting the transfers. October 29, 1985 has initially been selected as the date for conducting this meeting which will be held in Preston.

To provide adequate time for implementing a change to this schedule, please advise this office of your availability to be present on the above date.

Certified notices confirming the date, place, and time must be mailed ten (10) days prior to the conference and/or hearing. Once the certified notices are mailed, a postponement will require prior consent of the applicant.

Respectfully submitted,

ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

cc: Clyde Nelson, Attorney

October 11, 1985

RE: Application for Transfer No. 13-0027 & 13-0028
CITY OF PRESTON

City of Preston
City Hall
Preston, ID 83263

Gentlemen:

The hearing on the above referenced transfers, tentatively scheduled for October 29, 1985, has been postponed until November 19, 1985.

If you have any questions concerning this matter, please feel free to contact me.

Respectfully submitted,

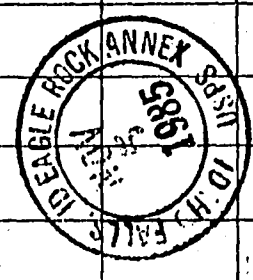
ERNEST CARLSEN
Assistant Regional Supervisor

EC:cw

Copy to: Clyde Nelson
Cub River Irrigation
Williams & Castleton
Preston-Whitney Irrigation District

PS Form 3877, Sept. 1979 ACCEPTANCE OF REGISTERED, INSURED, C.O.D. AND CERTIFIED MAIL

NAME AND ADDRESS OF SENDER		DEPARTMENT OF WATER RESOURCES EASTERN DISTRICT OFFICE 150 SHOUP AVE. IDAHO FALLS, IDAHO 83401		Indicate type of mail ☐ Registered ☐ Insured ☐ COD ☒ Certified		I certify that we have ☐ Commercial Insurance ☐ A deductible clause of \$		Affix stamp here if issued as certificate of mailing or for additional copies of this bill. POSTMARK AND DATE OF RECEIPT				
		NUMBER OF ARTICLE	NAME OF ADDRESSEE, STREET, AND POST-OFFICE ADDRESS	POSTAGE	FEE	Handling Charge	Actual Value (If Registered)	DUE SENDER IF C.O.D.	R. R. FEE	S.D. FEE	S. H. FEE	REST. DEL. FEE
1	13333	City of Pocatello, City Hall, Pocatello	22	75				70				13-0026 13-0027 13-0028
2	13334	William & Crestline, PO Box 191, Pocatello										
3	13335	J. J. Fisher, 324 25th St, Pocatello, Idaho										
4	13336	James Caudill, Pocatello, Idaho										
5	13337	Mark Nelson, PO Box 777, Soda Springs										
6	13338	Raymond Wheeler, Sub River, Iding, Pocatello										
7												
8												
9												
10												
11												
12												
13												
14												
15												
TOTAL NUMBER OF PIECES LISTED BY SENDER		TOTAL NUMBER OF PIECES RECEIVED AT POST OFFICE		POSTMASTER, PER (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. Commercial Insurance—Payment of the full registry fee is required on articles valued up to \$1,000 or the full amount of the deductible if the deductible exceeds \$1,000. The maximum indemnity payable is \$25,000 for registered mail, \$400 for COD and \$400 for insured mail. Special handling charges apply only to third- and fourth-class parcels. Special delivery service also includes special handling service.						
6		6		Jaggard								



BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
TRANSFER NO. 13-0027 IN THE) NOTICE OF HEARING
NAME OF CITY OF PRESTON) &/OR CONFERENCE

On September 19, 1983, the City of Preston filed with the Department of Water Resources an application to transfer the public waters of the State of Idaho. On January 3, 1984, the Department received protests against approval of said application from Preston Whitney Irrigation Company and Cub River River Irrigation Company.

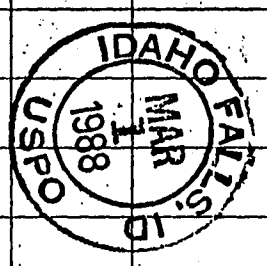
The Department has set the matter of protests for conference and/or hearing for 11:00 a.m., Wednesday, March 16, 1988, in the Ag Room, Franklin County Courthouse, Preston, Idaho. The hearing will be held in accordance with provisions of Chapters 2 and 17, Title 42 and Chapter 52, Title 67 of the Idaho Code and adopted Rules of Practice and Procedure of the Department of Water Resources. Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved.

Dated this 29th day of February, 1988.



RONALD D. CARLSON
Eastern Regional Manager

NAME AND ADDRESS OF SENDER		DEPARTMENT OF WATER RESOURCES EASTERN DISTRICT OFFICE 150 SHoup AVE. IDAHO FALLS, IDAHO 83401		Indicate type of mail ☐ Registered ☐ Insured ☐ COD ☒ Certified ☐ Express Mail		Check appropriate block for Registered Mail: ☐ With Postal Insurance ☐ Without Postal Insurance			Affix stamp here if issued as certificate of mailing or for additional copies of this bill. POSTMARK AND DATE OF RECEIPT				
Line	Number of Article	Name of Addressee, Street, and Post-Office Address	Postage	Fee	Handling Charge	Act. Value (If Regis.)	Insured Value	Due Sender If C.O.D.	R. R. Fee	S. D. Fee	S. H. Fee	Rest. Del. Fee Remarks	
1	0151	✓ Shattuck Hornet Bldg 16205 N Cleveland Rd	39	15					70			11-0600/0602 13-7449	
2	0152	✓ Ruined Hooper St Rt Box 62 Preston	22									13-7449	
3	0153	✓ J. L. Williams PO Box 191 Preston										11-0600/0602	
4	0154	✓ (Darius) White 15516 N Cleveland Rd Preston										" "	
5	0155	✓ Copenhagen Steels John Nelson 2412200 N Hyde St.										11-7367	
6	0156	✓ Edward Shepherd 440 In Reb Montpel	22									"	
7	0157	✓ Clyde Nelson PO Box 197 Soda Spg	39									11-7367 13-0027/0028	
8	0158	✓ City of Preston City Hall Preston	22									13-0027/0028	
9	0159	✓ Publisher Irving Preston etc.										" "	
10	0160	✓ Wangway Co Preston Whitney St & Preston										" "	
11	0161	✓ Williams & Cristator PO Box 191 Preston										" "	
12	0162	✓ Mitt Campbell Box 601 Lava										29-7837	
13	0163	✓ Archie Service PO Box 4883 Poca										"	
14	0164	✓ Stephen Larson PO Box 845 Poca										"	
15	0165	✓ William Tucker PO Box 1725 Poca	20									29-7837	
Total Number of Pieces Listed by Sender		Total Number of Pieces Received at Post Office		POSTMASTER, PER (Name of receiving employee)		The full declaration of value is required on all domestic and international registered mail. The maximum indemnity payable for nonnegotiable documents under Express Mail document reconstruction insurance is \$50,000 per piece subject to a limit of \$500,000 per occurrence. The maximum indemnity payable on Express Mail merchandise insurance is \$500. The maximum indemnity payable is \$25,000 for Registered Mail, \$400 for COD and \$400 for Insured Mail. Special handling charges apply only to Third- and Fourth-Class parcels. Special delivery service also includes special handling service.							
16		16		[Signature]									



PS Form 3877, May 1985

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to: <i>Regan Wheeler, Pres. Coke River Irrig. Co. Preston, Wt. 84320</i>	4. Article Number <i>0159</i> Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail Always obtain signature of addressee or agent and DATE DELIVERED .
5. Signature — Addressee <i>X Regan Wheeler</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature — Agent <i>X</i>	
7. Date of Delivery	

PS Form 3811, Feb. 1986 *13-0027/1028* DOMESTIC RETURN RECEIPT

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to: <i>Williams + Castleton P.O. Box 191 Preston, Id 83263</i>	4. Article Number <i>0161</i> Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail Always obtain signature of addressee or agent and DATE DELIVERED .
5. Signature — Addressee <i>X Cindy Checketts</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature — Agent <i>X</i>	
7. Date of Delivery <i>3-3-88</i>	

PS Form 3811, Feb. 1986 *13-0027/28* DOMESTIC RETURN RECEIPT

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to: <i>Angus Condee Preston Whitney Irrig. Dist Rt 3 Preston, Id 83263</i>	4. Article Number <i>0160</i> Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail Always obtain signature of addressee or agent and DATE DELIVERED .
5. Signature — Addressee <i>X</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature — Agent <i>X Marwan G. Condee</i>	
7. Date of Delivery <i>3-3-88</i>	

PS Form 3811, Feb. 1986 *13-0027/28* DOMESTIC RETURN RECEIPT

● **SENDER:** Complete items 1 and 2 when additional services are desired, and complete items 3 and 4. Put your address in the "RETURN TO" space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. ☐ Show to whom delivered, date, and addressee's address. 2. ☐ Restricted Delivery.

3. Article Addressed to: <i>City of Preston City Hall Preston, Id 83263</i>	4. Article Number <i>0158</i> Type of Service: ☐ Registered ☐ Insured ☒ Certified ☐ COD ☐ Express Mail Always obtain signature of addressee or agent and DATE DELIVERED .
5. Signature — Addressee <i>X [Signature]</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature — Agent <i>X</i>	
7. Date of Delivery <i>3-3-88 [Signature]</i>	

PS Form 3811, Feb. 1986 *13-0027/10028* DOMESTIC RETURN RECEIPT

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS
Print your name, address, and ZIP Code in the space below.
• Complete items 1, 2, 3, and 4 on the reverse.
• Attach to front of article if space permits, otherwise affix to back of article.
• Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO

Print Sender's name, address, and ZIP Code in the space below.

RECEIVED

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE. #15

IDAHO FALLS, IDAHO 83401

MAR 10 1988

Department of Water Resources
Eastern District Office

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

SENDER INSTRUCTIONS
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DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE. #15

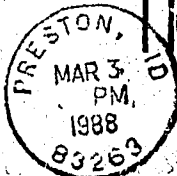
IDAHO FALLS, IDAHO 83401

MAR 4 1988

Department of Water Resources
Eastern District Office

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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EASTERN DISTRICT OFFICE

150 SHOUP AVE. #15

IDAHO FALLS, IDAHO 83401

MAR 4 1988

Department of Water Resources
Eastern District Office

UNITED STATES POSTAL SERVICE
OFFICIAL BUSINESS

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• Endorse article "Return Receipt Requested" adjacent to number.



PENALTY FOR PRIVATE
USE, \$300

RETURN
TO

Print Sender's name, address, and ZIP Code in the space below.

RECEIVED

DEPARTMENT OF WATER RESOURCES

EASTERN DISTRICT OFFICE

150 SHOUP AVE. #15

IDAHO FALLS, IDAHO 83401

MAR 3 1988

Department of Water Resources
Eastern District Office

March 8, 1988

Ag Room
Franklin County Courthouse
Preston, ID 83263

Dear Secretary:

This is to confirm the use of the Ag Room in the Franklin County Courthouse, Preston, Idaho, for water right hearings and/or conferences to be held by this Department on Tuesday, March 15, 1988, beginning at 1:00 p.m. and on Wednesday, March 16 beginning at 9:30 a.m.

Thank you for your cooperation in this matter.

Very truly yours,

COLLEEN WRAY
Adm. Secretary

T 13-0027 - CITY OF PRESTON

Ag Room, Franklin County Courthouse, Preston, Idaho
Wednesday, March 16, 1988 - 11:00 a.m.

ROSTER OF ATTENDANCE

Hearing Officer: _____

<u>Name</u>	<u>Representing</u>	<u>Address</u>
-------------	---------------------	----------------



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

January 22, 1991

Clyde Nelson
Preston City Attorney
Box 797
Soda Springs ID 83276

RE: Applications for Transfer for Rights ¹³15-00027 & 13-00028

Mr. Nelson:

Enclosed are copies of the above transfer applications filed by the City of Preston. It appears there was a conference set on March 16, 1988 to address protests filed on these applications. This conference never took place and the issues have never been resolved.

I would ask that you advise me if your client, the City of Preston, is still interested in pursuing these applications or withdraw the same. If you could contact me within thirty (30) days I would appreciate it.

Sincerely,

Harold W. Jones
Water Resource Supervisor

HWJ:lk
Encs.

CLYDE G. NELSON

ATTORNEY AT LAW

172 SOUTH MAIN STREET
P.O. Box 797
SODA SPRINGS, IDAHO 83276

CLYDE G. NELSON

January 30, 1991

TELEPHONE
(208) 547-2135
FAX
(208) 547-2136

RECEIVED

FEB 1 1991

Department of Water Resources
Eastern District Office

Mr. Harold W. Jones
Department of Water Resources
State of Idaho
150 Shoup Ave., Suite 15
Idaho Falls, ID. 83204

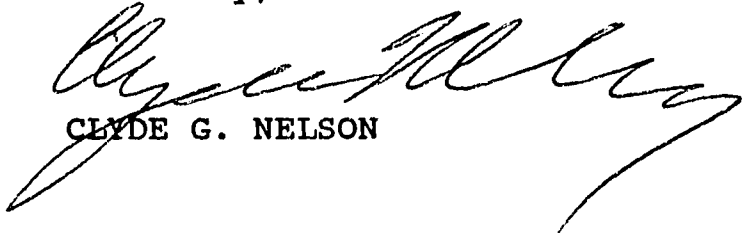
Re: Application for Transfer of Water Rights 13-00027 and 13-00028

Dear Mr. Jones:

Please be advised that the City of Preston is still interested in pursuing these applications, as with other applications which are part of a package. Hopefully we can wrap this thing up in about two months. I am having the same reviewed by other counsel at this time.

Thank you for your consideration in this matter, and if you have any questions, please contact me.

Sincerely,


CLYDE G. NELSON

CGN:js

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

JUL 29 1991

Department of Water Resources
Eastern District Office

IN THE MATTER OF THE APPLICATION OF
THE CITY OF PRESTON, APPLICATION
NO. 13-0027 TO CHANGE THE POINT OF
DIVERSION OF RANGER SPRING ON CUB
RIVER

WITHDRAWAL OF PROTEST OF
CUB RIVER IRRIGATION COMPANY
Application No. 13-0027
To Change Point of Diversion

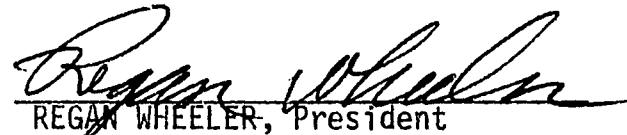
COMES NOW, the Cub River Irrigation Company, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Steven R. Fuller, Attorney at Law, P.O. Box 191, Preston, Idaho 83263; and does hereby withdraw its protest to the Application of the City of Preston, Idaho, to transfer the point of diversion of Ranger Springs to Berquist Springs, under Water Right Application No. 13-0027 based upon the following:

The protest of Cub River Irrigation Company was made for the reason that the City of Preston had not yet installed an adequate measuring device on its culinary water line at Berquist Springs. Based upon the fact that such a measuring device has been installed and the flow of water from Birch Springs and Berquist Springs is now and will be continually measured and monitored by the water master, the Cub River Irrigation Company hereby withdraws its protest.

DATED this 10 day of July, 1991.

CUB RIVER IRRIGATION COMPANY

By:


REGAN WHEELER, President

STATE OF UTAH)
County of CACHE)

On this 18th day of July, 1991, before me, the undersigned, a Notary Public in and for said State personally appeared REGAN WHEELER, President of the Corporation that executed the foregoing instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of July, 1991.

Muzanne H. Spencer
NOTARY PUBLIC for State of UTAH
Residing at: LEWISTON
Comm. Expires: 1/27/92

RECEIVED

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

JUL 29 1991

Department of Water Resources
Eastern District Office

IN THE MATTER OF THE APPLICATION OF
THE CITY OF PRESTON, APPLICATION
NO. 13-0027 TO CHANGE THE POINT OF
DIVERSION OF RANGER SPRING ON
CUB RIVER

WITHDRAWAL OF PROTEST OF
PRESTON/WHITNEY IRRIGATION COMPANY

Application No. 13-0027
To Change point of diversion

COMES NOW, the Preston Whitney Irrigation Company, a Corporation organized and existing under the laws of the State of Idaho, and whose address is c/o Steven R. Fuller, Attorney at Law, P.O. Box 191, Preston, Idaho 83263; and does hereby withdraw its protest to the Application of the City of Preston, Idaho, to transfer the point of diversion of Ranger Springs to Berquist Springs, under Water Right Application No. 13-0027 based upon the following:

The original protest of the Preston/Whitney Irrigation Company was made for the reason that the City of Preston had not yet installed an adequate measuring device on its culinary water line at Berquist Springs. Based upon the fact that such a measuring device has been installed and is now and will be continually measured and monitored by the Water Master, the Preston Whitney Irrigation Company does hereby withdraw its protest.

DATED this 23 day of July, 1991.

PRESTON WHITNEY IRRIGATION COMPANY

By: Carl Swainston
CARL SWAINSTON, President

STATE OF IDAHO)

County of Franklin)

On this 23rd day of July, 1991, before me, the undersigned, a Notary Public in and for said State personally appeared CARL SWAINSTON, known to me to be the President of the Corporation that executed the foregoing instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 23rd day of July, 1991.

Steven R. Fuller
NOTARY PUBLIC for State of Idaho
Residing at: Piceton, ID
Comm. Expires: 2/19/93

RECEIVED

JUL 29 1991

STEVEN R. FULLER
ATTORNEY AND COUNSELOR AT LAW
24 NORTH STATE • P.O. BOX 191 • PRESTON, IDAHO 83263
Department of Water Resources
Eastern District Office

TELEPHONE
(208) 852-2680
FAX (208) 852-2683

ALSO, MEMBER OF UTAH BAR

July 26, 1991

Mr. Ron Carlson
Idaho Department of Water Resources
150 Shupe Ave., Suite 15
Idaho Falls, ID 83402

Re: Withdrawals of Protest/Application Nos. 13-0027 and 13-0028

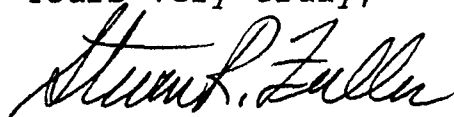
Dear Ron:

Please find the enclosed Withdrawals of Protest by Preston Whitney Irrigation Company and Cub River Irrigation Company to Applications Nos. 13-0027 and 13-0028 filed by Preston City.

The original protests were made by these Irrigation Companies because of the lack of an adequate measuring device to the City's water system. The Canal Companies have informed me that such devices are now in place and are being monitored by Conan Foster, water master.

If you have any questions, please let me know.

Yours very truly,



STEVEN R. FULLER
Attorney at Law

SRF/sh



State of Idaho

DEPARTMENT OF WATER RESOURCES

150 Shoup Ave., Suite 15, Idaho Falls, Idaho 83402 - (208) 525-7161

EASTERN REGION

CECIL D. ANDRUS
GOVERNOR
R. KEITH HIGGINSON
DIRECTOR

July 29, 1991

RE: Application for Transfer No. 13-0027 & No. 13-0028
CITY OF PRESTON

Mr. Steven R. Fuller
Attorney at Law
PO Box 191
Preston, ID 83263

Dear Mr. Fuller:

This letter acknowledges receipt of the withdrawal of protest against the above referenced applications. The Department has now resumed processing of these applications.

If you have any questions, please feel free to contact this office.

Very truly yours,

HAROLD W. JONES
Water Rights Supervisor

HWJ:CW

pc: Carl Swainston, Pres.
Preston Whitney Irrigation Company
Preston, ID 83263

Regan Wheeler, Pres.
Cub River Irrigation Dist.
Lewiston, Utah

RECEIVED
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Department of Water Resources

MEMORANDUM

TO: FILE

FROM: TIM LUKE

DATE: September 11, 1991

**RE: TRANSFER NO. 2974/RIGHT NO. 13-0027
TRANSFER NO. 2975/RIGHT NO. 13-0028**

=====

These transfers were filed in 1983. Protests received by the department delayed action on these transfers. The protests have only recently been withdrawn. The transfers seek to change the decreed points of diversion and water sources to one point of diversion and source. Specifically, the City of Preston is changing the decreed rights from Ranger and Birch Springs (rights 13-0027 and 13-0028 respectively) to Bergquist Spring. Remarks on both transfers state that the change was actually accomplished some 50 years prior to the filing of the transfer application. All of the springs are tributary to the Cub River.

Approval of the transfers is recommended subject to conditions below. The condition requiring adequate measuring devices is recommended since the city's lack of measuring devices on the spring was an issue of protest.

1) <<R01>> A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

2) <<R04>> Use of water under this water right is subject to control by the watermaster of State Water District No. 13-A, Cub River.

September 16, 1991

RE: Transfer of Water Right No. 13-0027

City of Preston
City Hall
Preston ID 83263

Dear Water Right Holder(s):

Enclosed is a copy of your approved Application for Transfer of the above referenced water right (Transfer No. 2974). Be sure to note any conditions of approval as listed on the second page.

Sincerely,

JIM JOHNSON
Water Rights Supervisor

JJ:blm

Enclosure